QUECHAN INDIAN TRIBE

Fort Yuma Indian Reservation

P.O. Box 11352
YUMA, ARIZONA 85366-9352
Phone (619) 572-0213
FAX (619) 572-2102

Allen Anspach, Superintendent
Bureau of Indian Affairs
Colorado River Agency
Route 1, box 9C
Parker, Arizona 85344

Re: Quechan Law and Order Code

Dear Mr. Anspach:

Enclosed is a copy of Quechan Tribal Council Resolution No. R-83-96 and the Quechan Law and Order Code. As you know, opening of the Tribe's casino within the Arizona portion of the Fort Yuma Reservation is scheduled for June 26, 1996. The combination of the Tribe's law and order code, federal jurisdiction and Arizona State jurisdiction will provide the necessary law enforcement capabilities to ensure the security and safety of the casino patrons, the Reservation and the surrounding communities. We are submitting a copy of the code to you as a courtesy for your records.

It is the Tribe's position that Secretarial approval of the code is not necessary. We have carefully reviewed Article IV of the Tribe's Constitution and Article 13 of the Tribe's Bylaws and other relevant portions of the Constitution and Bylaws of the Quechan Tribe and have concluded, with the advise of counsel, that there is no requirement for Secretarial approval of a tribal law and order code.

The Law and Order Code was enacted by the Tribal Council pursuant to the Council's powers under Article IV, section 7, cl. 1 (to safeguard the peace and safety of residents of the Reservation); Article IV, section 7, cl 2 (to establish courts for adjudication of claims and for the trial and punishment of members); and Article 13 of the Bylaws (to establish a tribal police force which shall have full jurisdiction on the Reservation in all cases not falling within the exclusive jurisdiction of federal or state courts). None of these sections require Secretarial approval of such ordinances.

On the other hand, various enumerated powers of the Council under Article IV of the Constitution expressly require Secretarial approval. For instance, section 1(d) (to employ legal counsel); section 1(e) (to revise the census roll of the Tribe within one year after adoption of the Constitution); section 3 (to administer

On behalf of the Tribe, I request that your office expedite your review process and issue a declination of approval letter to us at the earliest possible date. An advance copy of this Code was sent to Ms. Nona Tuchawena on June 3, 1996. The advance copy is identical to the enacted copy enclosed with this letter. Thank you for your assistance.

This code was drafted by our attorneys, Morisset, Schlosser, Ayer, & Jozwiak, and we request that if you have any questions regarding any specific portions of the code or regarding Secretarial approval, that you contact our attorneys directly: Mr. Frank R. Jozwiak or Ms. Kyme A. McGaw at (206) 386-5200.

Sincerely,

Mike Jackson, Sr., President
Quechan Tribe

FRJ:sap
Enclosure

cc: Ms. Nona Tuchawena
Ms. Charlotte Johnson
Mr. Wayne Nordwall
Mr. Frank R. Jozwiak

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R E S O L U T I O N

R-83-96

A RESOLUTION OF THE QUECHAN TRIBAL COUNCIL APPROVING THE QUECHAN LAW AND ORDER CODE.

WHEREAS: THE QUECHAN INDIAN TRIBE OF THE FORT YUMA RESERVATION IS A FEDERALLY RECOGNIZED INDIAN TRIBE ORGANIZED UNDER A CONSTITUTION AND BYLAWS RATIFIED BY THE TRIBE ON NOVEMBER 28, 1936, AND APPROVED BY THE SECRETARY OF THE INTERIOR ON DECEMBER 18, 1974; AND,

WHEREAS: THE QUECHAN TRIBAL COUNCIL IS THE DULY ELECTED GOVERNING BODY OF THE QUECHAN TRIBE AND EXERCISES GOVERNMENTAL AUTHORITY OVER LANDS WITHIN THE FORT YUMA RESERVATION LOCATED IN CALIFORNIA AND ARIZONA; AND

WHEREAS: ARTICLE IV OF THE CONSTITUTION OF THE QUECHAN INDIAN TRIBE EMPOWERS THE TRIBAL COUNCIL GENERALLY TO PROTECT THE HEALTH, SECURITY AND GENERAL WELFARE OF THE TRIBE AN ITS MEMBERS, TO SAFEGUARD THE PEACE AND SAFETY OF RESIDENTS OF THE FORT YUMA INDIAN RESERVATION AND TO ESTABLISH MINOR COURTS FOR ADJUDICATION OF CLAIMS AND FOR THE TRIAL AND PUNISHMENT OF MEMBERS CHARGED WITH OFFENSES; AND

WHEREAS: THE QUECHAN TRIBE HAS THE INHERENT SOVEREIGN POWER TO EXCLUDE NON-MEMBERS FROM THE RESERVATION OR TO SET CONDITIONS UPON WHICH THEY MAY REMAIN;AND

WHEREAS: ARTICLE IV OF THE CONSTITUTION QUECHAN INDIAN TRIBE EMPOWERS THE TRIBAL COUNCIL TO ENACT AN EXCLUSION ORDINANCE TO EXCLUDE NON-MEMBERS FORM THE RESERVATION ; AND

WHEREAS: ARTICLE XIII OF THE BYLAWS OF THE QUECHAN TRIBAL CONSTITUTION EMPOWERS THE TRIBAL COUNCIL TO ESTABLISH A TRIBAL POLICE FORCE, WHICH SHALL HAVE FULL JURISDICTION ON THE RESERVATION EXCEPT AS SUCH JURISDICTION IS EXCLUSIVE IN STATE OR FEDERAL COURT; AND

WHEREAS: THE TRIBAL COUNCIL HAS DETERMINED THAT IT IS APPROPRIATE, IN THE EXERCISE OF THE FOREGOING POWERS, TO ENACT A COMPREHENSIVE LAW AND ORDER CODE FOR THE ADMINISTRATION OF JUSTICE AND FOR THE APPREHENSION AND DISPOSITION OF OFFENSES COMMITTED WITHIN THE JURISDICTION OF THE QUECHAN INDIAN TRIBE.

THEREFORE, BE IT RESOLVED, THAT THE QUECHAN TRIBAL COUNCIL HEREBY ENACTS THE LAW AND ORDER CODE OF THE QUECHAN INDIAN TRIBE IN THE FORM ATTACHED AND HERETO; AND

BE IT FURTHER RESOLVED, THAT ANY CODE OR ORDINANCE OF THE TRIBE THAT CONFLICTS IN ANY WAY WITH THE PROVISIONS OF THIS CODE IS HEREBY REPEALED TO THE EXTENT THAT IT IS INCONSISTENT WITH OR IS CONTRARY TO THE SPIRIT OF PURPOSE OF THIS CODE; AND

BE IT FINALLY RESOLVED, THAT THIS RESOLUTION SHALL REMAIN IN EFFECT UNTIL RESCINDED OR SUPERSEDED BY FURTHER ACTION OF THE QUECHAN TRIBAL COUNCIL.

C E R T I F I C A T I O N

THE FOREGOING RESOLUTION WAS PRESENTED AT A SPECIAL COUNCIL MEETING WHICH CONVENED ON JUNE 07, 1996, DULY APPROVED BY A VOTE OF 3 FOR, 0 AGAINST, 1 ABSTAINED, 2 ABSENT, BY THE TRIBAL COUNCIL OF THE QUECHAN INDIAN TRIBE, PURSUANT TO THE AUTHORITY VESTED IN IT BY SECTION 16 OF THE INDIAN RE-ORGANIZATION ACT OF JUNE 18, 1934 (48 STAT. 984) AS AMENDED BY THE ACT OF JUNE 15, 1935 (49 STAT. 378), AND ARTICLE IV, SECTION 1 (A) AND SECTION 15 OF THE QUECHAN TRIBAL CONSTITUTION AND BYLAWS. THIS RESOLUTION IS EFFECTIVE AS OF THE DATE OF ITS APPROVAL.

QUECHAN TRIBE

BY:

Mike Jackson Sr.

MIKE JACKSON, SR., PRESIDENT

Mona Graham

MONA GRAHAM, TRIBAL COUNCIL SECRETARY

QUECHAN INDIAN TRIBE
Fort Yuma Indian Reservation

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R E S O L U T I O N

R-142-96

A RESOLUTION OF THE QUECHAN TRIBAL COUNCIL AMENDING THE QUECHAN LAW AND ORDER CODE, TITLE 13, §§ 13-1501 AND 13-1504.

WHEREAS: THE QUECHAN INDIAN TRIBE OF THE FORT YUMA RESERVATION IS A FEDERALLY RECOGNIZED INDIAN TRIBE ORGANIZED UNDER A CONSTITUTION AND BYLAWS RATIFIED BY THE TRIBE ON NOVEMBER 28, 1936, AND APPROVED BY THE SECRETARY OF THE INTERIOR ON DECEMBER 18, 1974; AND,

WHEREAS: THE QUECHAN TRIBAL COUNCIL IS THE DULY ELECTED GOVERNING BODY OF THE QUECHAN TRIBE AND EXERCISES GOVERNMENTAL AUTHORITY OVER LANDS WITHIN THE FORT YUMA RESERVATION LOCATED IN CALIFORNIA AND ARIZONA; AND

WHEREAS: ARTICLE IV OF THE CONSTITUTION OF THE QUECHAN INDIAN TRIBE EMPOWERS THE TRIBAL COUNCIL GENERALLY TO PROTECT THE HEALTH, SECURITY AND GENERAL WELFARE OF THE TRIBE AND ITS MEMBERS, TO SAFEGUARD THE PEACE AND SAFETY OF RESIDENTS OF THE FORT YUMA INDIAN RESERVATION AND TO ESTABLISH MINOR COURTS FOR ADJUDICATION OF CLAIMS AND FOR THE TRIAL AND PUNISHMENT OF MEMBERS CHARGED WITH OFFENSES; AND

WHEREAS: ARTICLE XIII OF THE BYLAWS OF THE QUECHAN TRIBAL CONSTITUTION EMPOWERS THE TRIBAL COUNCIL TO ESTABLISH A TRIBAL POLICE FORCE, WHICH SHALL HAVE FULL JURISDICTION ON THE RESERVATION EXCEPT AS SUCH JURISDICTION IS EXCLUSIVE IN STATE OR FEDERAL COURT; AND

WHEREAS: THE TRIBAL COUNCIL HAS DETERMINED THAT IT IS APPROPRIATE, IN THE EXERCISE OF THE FOREGOING POWERS, TO AMEND THE TRESPASS PROVISIONS OF ITS COMPREHENSIVE LAW AND ORDER CODE ADOPTED JUNE 7, 1996.

THEREFORE, BE IT RESOLVED, THAT THE QUECHAN TRIBAL COUNCIL HEREBY AMENDS §§ 13-1501 AND 13-1504 OF THE LAW AND ORDER CODE OF THE QUECHAN INDIAN TRIBE IN THE FORM ATTACHED HERETO; AND

BE IT FURTHER RESOLVED, THAT ANY CODE OR ORDINANCE OF THE TRIBE THAT CONFLICTS IN ANY WAY WITH THE PROVISIONS OF THIS AMENDMENT IS HEREBY REPEALED TO THE EXTENT THAT IT IS INCONSISTENT WITH OR IS CONTRARY TO THE SPIRIT OR PURPOSE OF THIS AMENDMENT; AND

BE IT FINALLY RESOLVED, THAT THIS RESOLUTION SHALL REMAIN IN EFFECT UNTIL RESCINDED OR SUPERSEDED BY FURTHER ACTION OF THE QUECHAN TRIBAL COUNCIL.

CERTIFICATION

THE FOREGOING RESOLUTION WAS PRESENTED AT A **SPECIAL COUNCIL MEETING** WHICH CONVENED ON **AUGUST 30, 1996**, DULY APPROVED BY A VOTE OF 3 FOR, 0 AGAINST, 0 ABSTAINED, 2 ABSENT, 1 VACANCY, BY THE TRIBAL COUNCIL OF THE QUECHAN INDIAN TRIBE, PURSUANT TO THE AUTHORITY VESTED IN IT BY SECTION 16 OF THE INDIAN RE-ORGANIZATION ACT OF JUNE 18, 1934 (48 STAT. 984) AS AMENDED BY THE ACT OF JUNE 15, 1935 (49 STAT. 378), AND ARTICLE IV, SECTION 1 (A) AND SECTION 15 OF THE QUECHAN TRIBAL CONSTITUTION AND BYLAWS. THIS RESOLUTION IS EFFECTIVE AS OF THE DATE OF ITS APPROVAL.

QUECHAN TRIBE

BY:

MIKE JACKSON, SR., PRESIDENT

MONA GRAHAM, TRIBAL COUNCIL SECRETARY

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Chapter 14
Sexual Offenses

§ 13-1402. Indecent Exposure; Classification.

A. A person commits indecent exposure if he or she exposes his or her genitals or anus and another person is present, and the defendant is reckless about whether such other person, as a reasonable person, would be offended or alarmed by the act.

B. Indecent exposure is a Class D offense.

Chapter 15
Criminal Trespass and Burglary

§ 13-1501. Definitions. In this Chapter, unless the context otherwise requires:

1. "Enter or remain unlawfully" means an act of a person who enters or remains on premises when such person's intent for so entering or remaining is not licensed, authorized or otherwise privileged except when the entry is to commit theft of merchandise displayed for sale during normal business hours, when the premises are open to the public and the person does not enter any unauthorized areas of the premises.

2. "Entry" means the intrusion of any part of any instrument or any part of a person's body inside the external boundaries of a structure or unit of real property.

~~3. "Fenced commercial yard" means a unit of real property surrounded completely by either fences, walls, buildings, or similar barriers or any combination thereof, and used primarily for business operations or where livestock, produce or other commercial items are located.~~

4. "Fenced residential yard" means a unit of real property immediately surrounding or adjacent to a residential structure and enclosed by a fence, wall, building or similar barrier, or any combination thereof.

5. "In the course of committing" means any acts performed by an intruder from the moment of entry to and including flight from the scene of a crime.

~~6. "Nonresidential structure" means any structure other than a residential structure.~~

7. "Residential structure" means any structure, movable or immovable, permanent or temporary, adapted for both human residence and lodging whether occupied or not.

8. "Structure" means any building, object, vehicle, railroad car or place with sides and a floor, separately securable from any other structure attached to it and used for lodging, business, transportation, recreation or storage.

§ 13-1504. Criminal Trespass; Classification.

A. A person commits criminal trespass in the first degree by knowingly:

1. Entering or remaining unlawfully in or on a residential structure~~, or~~ in a fenced residential yard, or in or on any nonresidential premises or structure.

2. Entering any residential yard and, without lawful authority, looking into the residential structure thereon in reckless disregard of infringing on the inhabitant's right of privacy.

3. Entering unlawfully on real property subject to a valid mineral claim or lease with the intent to hold, work, take or explore for minerals on such claim or lease.

4. Entering or remaining unlawfully on the property of another and burning, defacing, mutilating or otherwise desecrating a religious symbol or other religious property of another without the express permission of the owner of the property.

B. Criminal trespass in the first degree is a Class B offense if it is committed by entering or remaining unlawfully in or on a residential structure or committed pursuant to subsection A, paragraph 4. Criminal trespass in the first degree is a Class C offense if it is committed by entering or remaining unlawfully in a fenced residential yard or committed pursuant to subsection A.2 or A.3.

§ 13-1505. Possession of Burglary Tools; Classification.

A. A person commits possession of burglary tools by possessing any explosive, tool, instrument or other article adapted or commonly used for committing any form of burglary as defined in section 13-1508 and intending to use or permit the use of such an item in the commission of a burglary.

B. Possession of burglary tools is a Class D offense.

§ 13-1508. Burglary; Classification.

A. A person commits burglary by entering or remaining unlawfully in a structure or yard with the intent to commit any theft or any Class A or B offense under this Title or any act that would be a felony under federal or state law.

B. Burglary is a Class A offense if a person commits burglary by entering or remaining unlawfully in or on a nonresidential structure, a fenced commercial or

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RESOLUTION

R-187-96

A RESOLUTION OF THE QUECHAN TRIBAL COUNCIL ADDING SUBCHAPTER 35A (ALCOHOL OFFENSES) AND §13-1205 TO THE QUECHAN LAW AND ORDER CODE, TITLE 13, AND AMENDING §13-2904 AND §13-4092.1.

WHEREAS: THE QUECHAN INDIAN TRIBE OF THE FORT YUMA RESERVATION IS A FEDERALLY RECOGNIZED INDIAN TRIBE ORGANIZED UNDER A CONSTITUTION AND BYLAWS RATIFIED BY THE TRIBE ON NOVEMBER 28, 1936, AND APPROVED BY THE SECRETARY OF THE INTERIOR ON DECEMBER 18, 1936, WITH REVISED AMENDMENTS APPROVED ON NOVEMBER 18, 1974; AND

WHEREAS: THE QUECHAN TRIBAL COUNCIL IS THE DULY ELECTED GOVERNING BODY OF THE QUECHAN TRIBE AND EXERCISES GOVERNMENTAL AUTHORITY OVER LANDS WITHIN THE FORT YUMA RESERVATION LOCATED IN CALIFORNIA AND ARIZONA; AND

WHEREAS: ARTICLE IV OF THE CONSTITUTION OF THE QUECHAN INDIAN TRIBE EMPOWERS THE TRIBAL COUNCIL GENERALLY TO PROTECT THE HEALTH, SECURITY AND GENERAL WELFARE OF THE TRIBE AND ITS MEMBERS, TO SAFEGUARD THE PEACE AND SAFETY OF RESIDENTS OF THE FORT YUMA INDIAN RESERVATION; AND

WHEREAS: THE TRIBAL COUNCIL HAS DETERMINED THAT IT IS APPROPRIATE IN THE EXERCISE OF THE FOREGOING POWERS AND IN ANTICIPATION OF THE COUNCIL'S AUTHORIZATION OF THE SALE OF ALCOHOLIC

BEVERAGES, IN CONFORMANCE WITH TRIBAL ORDINANCE 66-1, THE ARIZONA-QUECHAN TRIBE CLASS III GAMING COMPACT AND ARIZONA STATE LAW, TO ADD ALCOHOL RELATED CRIMES TO ITS COMPREHENSIVE LAW AND ORDER CODE ADOPTED JUNE 7, 1996, AND TO AMEND THE LAW AND ORDER CODE TO MAKE IT CONSISTENT WITH SUCH ADDITION.

THEREFORE, BE IT RESOLVED, THAT THE QUECHAN TRIBAL COUNCIL HEREBY AMENDS THE LAW AND ORDER CODE OF THE QUECHAN INDIAN TRIBE BY ADDING SUBCHAPTER 35A (ALCOHOL OFFENSES) AND §13-1205 IN THE FORM ATTACHED HERETO; AND

BE IT FURTHER RESOLVED, THAT THE QUECHAN TRIBAL COUNCIL HEREBY AMENDS §13-2904 AND §13-4092.1 OF THE LAW AND ORDER CODE OF THE QUECHAN INDIAN TRIBE IN THE FORM ATTACHED HERETO; AND

BE IT FURTHER RESOLVED, THAT ANY CODE OR ORDINANCE OF THE TRIBE THAT CONFLICTS IN ANY WAY WITH THE PROVISIONS OF THIS AMENDMENT IS HEREBY REPEALED TO THE EXTENT THAT IT IS INCONSISTENT WITH OR IS CONTRARY TO THE SPIRIT OR PURPOSE OF THIS AMENDMENT; EXCEPT THAT THE PROVISIONS OF ORDINANCE 66-1 ARE SPECIFICALLY RETAINED AND CONFIRMED BY THIS RESOLUTION ; AND

BE IT FINALLY RESOLVED, THAT THIS RESOLUTION SHALL REMAIN IN EFFECT UNTIL RESCINDED, VETOED BY ITS MEMBERS, OR SUPERSEDED BY FURTHER ACTION OF THE QUECHAN TRIBAL COUNCIL.

CERTIFICATION

THE FOREGOING RESOLUTION WAS PRESENTED AT A SPECIAL COUNCIL MEETING OF THE QUECHAN TRIBAL COUNCIL WHICH CONVENED ON DECEMBER 11, 1996, DULY APPROVED BY A VOTE OF 4 FOR, 0 AGAINST, 0 ABSTAINED, 2 ABSENT, BY THE TRIBAL COUNCIL OF THE QUECHAN TRIBE, PURSUANT TO THE AUTHORITY VESTED IN IT BY SECTION 16 OF THE INDIAN RE-ORGANIZATION ACT JUNE 18, 1934 (48 STAT. 984), AS AMENDED BY THE ACT OF JUNE 15,

1935, (49 STAT. 378), AND ARTICLE IV, OF THE QUECHAN TRIBAL CONSTITUTION AND BYLAWS. THIS RESOLUTION IS EFFECTIVE AS OF THE DATE OF ITS APPROVAL.

QUECHAN TRIBE

BY:

Mike Jackson Sr

MIKE JACKSON, SR., PRESIDENT

Mona Graham

MONA GRAHAM, TRIBAL COUNCIL SECRETARY

Chapter 35A
Alcohol Offenses

§ 13-4244. Alcohol Offenses; Classification.

It is shall be a criminal offense:

7. For any retail licensee to purchase spirituous liquors from any person other than a solicitor or salesman of a wholesaler licensed by the Tribe, the State of Arizona, or the State of California.

9. Except as may be provided in Title 12 of the Quechan Law and Order Code (Alcohol Regulation), for a licensee or other person to sell, furnish, dispose of or give, or cause to be sold, furnished, disposed of or given, to a person under the legal drinking age, or for a person under the legal drinking age to buy, receive, have in possession or consume, spirituous liquor. The provisions of this paragraph shall not prohibit the employment by an off-sale retailer of persons who are at least sixteen years of age to check out, if supervised by a person on the premises who is at least nineteen years of age, package or carry merchandise, including spirituous liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor.

14. For a licensee or other person to serve, sell or furnish spirituous liquor to a disorderly or obviously intoxicated person, or for a licensee or employee of the licensee to allow or permit a disorderly or obviously intoxicated person to come into or remain on or about the premises, except that a licensee or an employee of the licensee may allow an obviously intoxicated person to remain on the premises for a period of time of not to exceed thirty minutes after the state of obvious intoxication is known or should be known to the licensee in order that a nonintoxicated person may transport the obviously intoxicated person from the premises. For purposes of this section, "obviously intoxicated" means inebriated to the extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person.

16. For a licensee or employee to knowingly permit any person on or about the licensed premises to give or furnish any spirituous liquor to any person under the age of twenty-one or knowingly permit any person under the age of twenty- one to have in the person's possession spirituous liquor on the licensed premises.

20. For a person to consume spirituous liquor in a public place, thoroughfare or gathering. The license of a licensee permitting a violation of this paragraph on the premises shall be subject to revocation. This paragraph does not apply to the sale of spirituous liquors on the premises of and by an on-sale retail licensee. This paragraph also does not apply to a person consuming beer from a broken package in a public recreation area or on private property with permission of the owner or lessor or on the walkways surrounding such private property.

21. For a person to have possession of or to transport spirituous liquor which is manufactured in a distillery, winery, brewery or rectifying plant contrary to the laws of the United States, the State of Arizona, the State of California, or the Quechan Tribe. Any property used in transporting such spirituous liquor shall be forfeited to the Tribe and shall be seized and disposed of as provided in tribal law.

22. For a person to operate a motor vehicle on any highway while consuming spirituous liquor.

25. For a licensee or employee to knowingly permit the unlawful possession, use, sale or offer for sale of narcotics, dangerous drugs or marijuana on the premises.

26. For a licensee or employee to knowingly permit prostitution or the solicitation of prostitution on the premises.

27. For a licensee or employee to knowingly permit unlawful gambling on the premises.

28. For a licensee or employee to knowingly permit trafficking or attempted trafficking in stolen property on the premises.

30. For any person other than a peace officer or the licensee or an employee of the licensee acting with the permission of the licensee to be in possession of a firearm while on the licensed premises of an on-sale retail establishment knowing such possession is prohibited. This paragraph shall not be construed to include a situation in which a person is on licensed premises for a limited time in order to seek emergency aid and such person does not buy, receive, consume, or possess spirituous liquor. This paragraph shall not apply to hotel or motel guest room accommodations nor to the exhibition or display of a firearm in conjunction with a meeting, show, class or similar event.

31. For a licensee or employee to knowingly permit a person in possession of a firearm other than a peace officer or the licensee or an employee of the licensee acting with the permission of the licensee to remain on the licensed premises or to serve, sell, or furnish spirituous liquor to a person in possession of a firearm while on the licensed premises of an on-sale retail establishment. This paragraph shall not apply to hotel or motel guest room accommodations nor to the exhibition or display of a firearm in conjunction with a meeting, show, class or similar event. It shall be a defense to action under this paragraph if the licensee or employee requested assistance of a peace officer to remove such person.

33. For a person who is obviously intoxicated to buy or attempt to buy spirituous liquor from a licensee or employee of a licensee or to consume spirituous liquor on the licensed premises.

34. For a person under the age of twenty-one years to drive or be in physical control of a motor vehicle while there is any spirituous liquor in the person's body.

35. For a person under the age of twenty-one years to operate or be in physical control of a motorized watercraft that is underway while there is any spirituous liquor in the person's body.

36. For a licensee, manager, employee, or controlling person to purposely induce a voter, by means of alcohol, to vote or abstain from voting for or against a particular candidate or issue on an election day.

37. For a licensee to fail to report an occurrence of an act of violence to either the department or a law enforcement agency.

B. Any violation of § 13-4244.A is a Class C offense.

§ 13-1205. Unlawfully Administering Intoxicating Liquors, Narcotic Drug or Dangerous Drug; Classification.

A. A person commits unlawfully administering intoxicating liquors, a narcotic drug or dangerous drug if, for a purpose other than lawful medical or therapeutic treatment, such person knowingly introduces or causes to be introduced into the body of another person without such other person's consent, intoxicating liquors, a narcotic drug or dangerous drug.

B. Unlawfully administering an intoxicating liquor, a narcotic drug or a dangerous drug is a Class B offense.

This section was approved by the Quechan Indian Tribe, Resolution R-___-96, dated December ___, 1996. This section is similar to the same numbered section in the Arizona Revised Statutes Annotated that was in effect at the time of enactment of this Code. The classification of the offenses in § 13-4244.B is made independent of Arizona law and is based on Quechan tribal law, culture and tradition.

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Subchapter 35A was approved by the Quechan Indian Tribe, Resolution R-___-96, dated December 11, 1996. Section § 13-4244.A is similar to § 4-244 in the Arizona Revised Statutes Annotated that was in effect at the time of enactment of this Code, in that it makes certain acts that would violate A.R.S. § 4-244--primarily by those consuming alcohol--crimes under Quechan tribal law. The provisions of A.R.S. § 4-244 that are retained and adopted into the Quechan Law and Order Code bear the same paragraph numbers they have in § 2-244.

Other acts that would violate A.R.S. § 4-244--primarily by those retailers selling alcohol--are not crimes under Quechan tribal law. Such acts are dealt with under the Tribe's alcohol regulation ordinance, to be codified in Title 12 (Alcohol Regulation) of the Quechan Law and Order Code.

The classification of the crimes in § 13-4244.B is made independent of Arizona law and is based on Quechan tribal law, culture and tradition.

This section is intended to supplement, not supersede, Quechan Tribal Council Ordinance No. 66-1, adopted December 20, 1966, approved by the Secretary of the Interior February 16, 1967. 32 Fed. Reg. 2982.

Ordinance 66-1 authorizes the Tribe and other persons, including corporations, partnerships, associates, and natural persons, to introduce, store, sell, and possess alcoholic beverages within the Fort Yuma Indian Reservation. Ordinance 66-1 allows the Tribal Council to authorize the Tribe to introduce, store, sell and possess alcoholic beverages on the Fort Yuma Reservation without further steps.

However, the introduction, storage, sale and possession of alcoholic beverages on the Fort Yuma Reservation by persons other than the Tribe must be specifically approved by the Tribal Council, and the tribal membership must authorize, in a referendum election, the Tribal Council's grant of such approval. Ordinance 66-1 specifically exempts Tribal Council approvals "for commercial purposes on Tribal lands specifically designated by the Quechan Tribal Council" from the membership authorization requirement.

§ 13-2904. Disorderly Conduct; Classification.

A. A person commits disorderly conduct if, with intent to disturb the peace or quiet of any public or private place or person on the Reservation, ~~a neighborhood, family or person,~~ or with knowledge of doing so, such person:

1. Engages in fighting, violent or seriously disruptive behavior; or

2. Makes unreasonable noise; or

3. Uses abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person; or

4. Makes any protracted commotion, utterance or display with the intent to prevent the transaction of the business of a lawful meeting, gathering or procession; or

5. Refuses to obey a lawful order to disperse issued to maintain public safety in dangerous proximity to a fire, a hazard or any other emergency; or

6. Recklessly handles, displays or discharges a deadly weapon or dangerous instrument.

B. Disorderly conduct is a Class C offense.

This section was amended by Resolution , enacted December 11, 1996, by adding the following language before the words "the Reservation": "any public or private place or person on". The words "a neighborhood, family or person," were stricken out.

§ 13-4092.1 Arizona Criminal Statutes Not Adopted into this Code. Note that some of the sections listed below may have been listed as repealed or renumbered at the time this Code was enacted and that not all sections of Title 13 of the Arizona Revised Statutes are sequentially numbered.

§ 13-102
§ 13-104
§ 13-105 ¶¶ 3, 4, 16, 21, 23, 27
§ 13-106 - § 13-109
§ 13-112 - § 13-113
§ 13-115 ¶ B
§ 13-118 - § 13-119
§ 13-120 ¶ B
§ 13-121
§ 13-123 - § 13-166
§ 13-202 - § 13-203
§ 13-211 - § 13-294
§ 13-305 - § 13-306
§ 13-414 - § 13-415
§ 13-421 - § 13-492
§ 13-502
§ 13-504 - § 13-593
§ 13-601 - § 13-602
§ 13-603 ¶¶ A, B, D, E, F, H, I, J, K
§ 13-604 - § 13-689
§ 13-701 - § 13-707.01
§ 13-710 - § 13-714
§ 13-801 - § 13-803
§ 13-805 - § 13-806

§ 13-808
§ 13-809 ¶¶ B, C
§ 13-810 ¶ C.2
§ 13-811
§ 13-821 - § 13-895

Chapter 9

§ 13-1004 ¶¶ B.3, B.4
§ 13-1007 - § 13-1094

Chapter 11

§ 13-1201
§ 13-1204 ¶¶ A.4, C
~~§ 13-1205~~§ 13-1206 - § 13-1207
§ 13-1209 ¶ D
§ 13-1221 - § 13-1294

§ 13-1302
§ 13-1304 - § 13-1328

§ 13-1401
§ 13-1403 - § 13-1472

§ 13-1502 - § 13-1503
§ 13-1506 - § 13-1507
§ 13-1509 - § 13-1599.01

Chapter 16

§ 13-1702
§ 13-1705 - § 13-1761

§ 13-1804
§ 13-1809 ¶C
§ 13-1810 - § 13-1811
§ 13-1821 - § 13-1885

§ 13-1903 - § 13-2000

§ 13-2003 - § 13-2006
§ 13-2008 - § 13-2027

§ 13-2102
§ 13-2104
§ 13-2106
§ 13-2109

§ 13-2204 - § 13-2208

§ 13-2301 ¶ D.4
§ 13-2302 - § 13-2304
§ 13-2307

§ 13-2308 ¶¶ E, F, G
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QUECHAN LAW AND ORDER CODE

TITLE 1
GENERAL PROVISIONS

Chapter 1.1
Application of Code; Definitions; General Provisions

§ 1.1.1. Territory, Persons and Property Affected. The jurisdiction and governmental authority of the Tribe shall apply to the following:

A. The Fort Yuma Indian Reservation, including all lands, islands, waters, roads, and bridges or any interests therein, whether trust or non-trust status and notwithstanding the issuance of any patent or right-of-way, within the boundaries of the Reservation as established in the Executive Order of January 9, 1884, as modified by the Executive Order of December 19, 1900, and such other lands, islands, waters or any interest therein subsequently added to the Reservation.

B. All persons and property within the geographical area referred to in subsection A, to the extent not prohibited by federal or tribal law.

C. All members of the Tribe, wherever located.

D. All persons and property outside the geographical area referred to in subsection 1.1.1.A, to the extent not prohibited by federal or tribal law, including any person who personally or through an agent does any of the following:

1. Transacts any business on the Reservation or transacts any business concerning any property located on the Reservation;

2. Commits a tortious act on the Reservation; or

3. Contracts with any person located on the Reservation at the time of contracting.

§ 1.1.2. Constitutional Authority. This Code is adopted pursuant to the authority vested in the Quechan Tribal Council under art. IV, §§ 7, 11, 12 and 13 of the Amended Version, Constitution of the Quechan Indian Tribe (as approved Nov. 18, 1974).

§ 1.1.3. Prior Inconsistent Codes and Ordinances Repealed. Any Code or ordinance of the Tribe that conflicts in any way with the provisions of this Code is hereby repealed to the extent that it is inconsistent with or is contrary to the spirit or purpose of this Code.

§ 1.1.4. Code to Have No Effect Upon Sovereign Immunity. Nothing in this Code nor any individual Title herein shall be construed to be a waiver of the sovereign immunity of the Tribe, its officers, officials, employees, agents, subdivisions or enterprises or corporate

entities of any nature or type or to be a consent to any suit beyond the limits now or hereafter specifically stated by tribal law.

§ 1.1.5. Full Faith and Credit. It is the intention of this Code that the court of any state shall give full faith and credit to the public acts, records and judicial proceedings of the Quechan Indian Tribe as to any proceeding brought under this Code to the same extent that full faith and credit is given to the public acts, records and judicial proceedings of any other state as provided for in the United States Constitution.

§ 1.1.6. Construction. This Code shall be liberally construed to effect its purpose and to promote substantial justice.

§ 1.1.7. Amendment of Law and Order Code. This Code may be amended in the manner provided for the adoption of tribal ordinances. Amendments and additions to this Code shall become a part of the Code for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering and organization of this Code.

Chapter 1.2
Definitions

§ 1.2.1. Definitions. In this Code, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

A. Civil. "Civil" refers to all noncriminal issues, matters, subjects, cases and controversies.

B. Clerk. "Clerk" shall mean the Tribal Court Clerk, who may be functioning as a court clerk for the Quechan Trial Division, Quechan Supreme Court, or Juvenile Court, as indicated by the context.

C. Code. "Code" shall mean this Law and Order Code of the Quechan Indian Tribe, comprising Titles 1 through 13, together with all amendments, additions, or modifications that may be enacted from time to time by the Tribal Council.

D. Constitution. "Constitution" or "Quechan Constitution" shall mean the Amended Version, Constitution of the Quechan Indian Tribe as approved by the Secretary of the Interior on November 18, 1974.

E. Criminal. "Criminal" refers to those offenses under this Code and any other ordinance of the Tribe for which, upon conviction, a person may be subject to a fine or imprisonment, or both, and to the cases involving such alleged offenses and to the procedures for their trial or other disposition.

F. Judge. "Judge" means any Tribal Court judge, including the Chief Judge, judges pro tem and special judges.

G. Indian. "Indian" shall mean any person who is a member of any federally recognized Indian tribe at the time of the event.

H. Juvenile Court. "Juvenile Court" means the court of that name established under the provisions of Title 5 of this Code, and the judges of that Court, collectively and individually, serving and acting in that office and capacity. The Juvenile Court is the court in which all juvenile offender matters are heard, unless referred to the Trial Division pursuant to the provisions of Title 5, and all other matters involving minors that may be assigned to that court pursuant to tribal law.

I. Party. "Party" shall mean any person who is a participant, or involved in or the subject of or to, whether active or inactive, voluntary or involuntary, including one made a party by the action of another person, in or to any case, trial, hearing, controversy, matter, relationship, or proceeding that is governed by this Code.

J. Person. "Person" shall mean any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, corporation, association, society, political entity, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise; provided, however, that the term does not include the federal government and any agency thereof, the government of the Tribe and any governmental entities of the Tribe, or any of the above listed forms of business entities that are wholly owned or operated by the Tribe.

K. Property. "Property" shall mean realty and personalty, of whatever nature, including fixtures, money, claims, intangible rights and interests in property.

L. Quechan Supreme Court. "Quechan Supreme Court" or "Supreme Court" means the court of that name established under the provisions of Title 2 of this Code, and the judges of that Court, collectively and individually, serving and acting in that office and capacity. The Quechan Supreme Court is the court of last resort to which appeals may be taken from the Trial Division. The judicial decisions of the Quechan Supreme Court are final and are not subject to further appeal.

M. Reservation. "Reservation" shall mean the Fort Yuma Indian Reservation established by the Executive Order of January 9, 1884, as modified by the Executive Order of December 19, 1900, including all lands, islands, waters, roads, and bridges, or any interests therein, whether in trust or non-trust status and notwithstanding the issuance of any patent or right-of-way.

N. Trial Division. "Trial Division" means the court of that name established under the provisions of Title 2 of this Code, and the judges of that Court, collectively and individually, serving and acting in that office and capacity. The Trial Division is the court of general jurisdiction.

O. Tribal Council or Council. "Tribal Council" or "Council" shall mean the Tribal Council of the Tribe existing and functioning pursuant to the Constitution.

P. Tribal Court or Tribal Court System. "Tribal Court" or "Tribal Court system" shall mean all of the courts established under this Code.

Q. Tribe and Tribal. "Tribe" shall mean the Quechan Indian Tribe, recognized by the federal government and operating pursuant to the Constitution, and "tribal" shall mean belonging or pertaining to the Tribe, unless the context indicates otherwise.

This Title approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Title is newly added to the laws of the Quechan Indian Tribe.

QUECHAN LAW AND ORDER CODE

TITLE 2
THE QUECHAN TRIBAL COURT SYSTEM

Chapter 2.1
General Provisions

§ 2.1.1. Creation. The Tribe hereby establishes and activates a court system pursuant to the Quechan Constitution. This court system shall be called the Tribal Court and shall consist of the Trial Division, Juvenile Court and the Quechan Supreme Court, which shall be the court of final appellate review. The Tribal Council may establish a court of intermediate appellate review if the need should arise.

§ 2.1.2. Authorization to Share or Contract for Tribal Court Resources. Notwithstanding any other provision of this Title, the Tribal Council is hereby authorized to negotiate agreements for shared use of Tribal Court personnel, facilities and financial resources or to otherwise contract for personnel and services to the Tribal Court when such agreements or contracts are in the best interests of the Tribe and will further the purposes of this Code.

§ 2.1.3. Civil Jurisdiction. The Tribal Court shall have general civil jurisdiction over all civil actions arising under the Quechan Constitution, the tribal Law and Order Code, and the tribal common law, over all general civil claims which arise within the tribal jurisdiction, and over all transitory claims in which the defendants may be served within the tribal jurisdiction. Personal jurisdiction shall exist over all defendants served within the territorial jurisdiction of the Tribe, or served anywhere in cases arising within the territorial jurisdiction of the Tribe, and over all persons consenting to such jurisdiction.

§ 2.1.4. Criminal Jurisdiction. The Tribal Court shall have original jurisdiction over all criminal offenses enumerated and defined in any ordinance adopted by the Quechan Indian Tribe insofar as not prohibited by tribal or federal law.

§ 2.1.5. Juvenile Court Jurisdiction; Original. To the extent allowed by tribal and federal law the Juvenile Court shall have exclusive, original jurisdiction over proceedings in which a person under eighteen (18) years of age is alleged to have committed an act that would be an offense under this Code if the person were an adult, unless the Juvenile Court transfers jurisdiction to the Trial Division; provided, however, the Juvenile Court shall not have jurisdiction over any fishing or hunting proceedings in which it is alleged that the person under 18 has violated any ordinance or regulation relating to on- or off-Reservation fishing or hunting. The Quechan Supreme Court may hear appeals in juvenile cases as in other civil actions.

§ 2.1.6. Juvenile Court Jurisdiction; Continuing. Except as otherwise provided in this Title or terminated by court order, the jurisdiction of the Juvenile Court shall continue until the person under eighteen (18) becomes emancipated or turns 18.

§ 2.1.7. Consent to Jurisdiction. The act of entering the exterior boundaries of the Reservation and performance of any act specified in subsection 1.1.1.D of this Title shall be considered consent to the jurisdiction of the Tribe and the Tribal Court.

§ 2.1.8. Jurisdictional Limitations.

A. The Tribal Court shall have no jurisdiction to adjudicate issues of Reservation status, boundaries, diminishment or disestablishment, status of lands within the Reservation, or cancellation of leases made pursuant to federal law.

B. The Tribal Court shall have no jurisdiction to adjudicate an election dispute or take jurisdiction over a suit against the Tribe or adjudicate any internal tribal government dispute.

C. The Tribal Court shall have no jurisdiction to adjudicate who is a tribal official, and the decision of the BIA on who is a tribal official is binding in the Tribal Court.

D. The Tribal Court shall have no jurisdiction to adjudicate a suit against the Tribe, its officers, officials, employees, agents, subdivisions, enterprises or corporate entities of any nature or type or to award damages, costs, or attorneys fees against the Tribe absent a clear, unequivocal and express written waiver of sovereign immunity made by valid Tribal Council resolution or other enactment.

E. The Tribal Court shall have no jurisdiction to review any order of the Tribal Gaming Commission or any other administrative, quasi-administrative, quasi- judicial or similar board, commission, body or person of the Tribe.

§ 2.1.9. Mandatory Application of Certain Positive Law. In the decision of any matter before it, the Tribal Court shall apply the law as follows:

A. The Quechan Constitution and this Code, as may be amended hereafter;
B. Any resolutions or ordinances of the Tribe;
C. Any applicable laws of the United States; and
D. Any authorized regulations of the Interior Department.

Except as required by federal law, no federal or state law or law of another tribe shall be applied by the Tribal Court unless specifically incorporated into tribal law by this Code or by a decision of the Tribal Court adopting such law as tribal common law.

§ 2.1.10. Mandatory Application of Tribal Common Law, in the Form of Traditional Customs and Usages. In matters not addressed by the positive law listed in section 2.1.9, the Tribal Court shall apply traditional tribal customs and usages, which shall be called the tribal common law. When in doubt as to the tribal common law, the Tribal Court may request the advice of counselors and tribal elders familiar with it.

§ 2.1.11. Other Law May be Looked to for Guidance. As to any matters that are not covered by tribal Constitution, code, ordinances and resolutions of the Tribe or by tribal

common law or by applicable federal laws and regulations, the Tribal Court may be guided by common law as developed by other tribal, state and federal courts.

§ 2.1.12. Precedential Value of Decisions of Other Tribal Courts. The decisions of other tribal courts shall not be binding precedent upon the Tribal Court but shall be used for guidance pursuant to section 2.1.11.

§ 2.1.13. Records. The Tribal Court shall be a court of record, as defined by federal law. To preserve such records:

A. All Tribal Court proceedings shall be recorded by electronic or stenographic means. The recording shall be identified by case number and kept for five (5) years for use in appeals or collateral proceedings in which the events of the hearing are in issue. At the expense of the requesting party, the recording may be transcribed and made a permanent part of the case record, upon the certification by the transcriber that the transcript is a true and accurate transcription of the recording.

B. The Tribal Court Clerk shall keep in a file bearing the case name and number every written document filed in the case.

C. All Tribal Court records shall be public records except as otherwise provided by law.

§ 2.1.14. Procedure When No Rules Provided. Whenever no specific procedure is established in this Code, the Tribal Court may look for guidance to the Federal Rules of Civil or Criminal Procedure currently in effect.

§ 2.1.15. Rules of the Tribal Court. The Chief Judge may establish rules concerning the administration of the Tribal Court and conduct in the Quechan Supreme Court and Trial Division not inconsistent with tribal law or the Quechan Constitution. Such rules may govern the conduct, demeanor, and decorum of those in the Tribal Court as well as the form and filing of appeals, briefs, pleadings, and other matters which will make the Tribal Court function more efficiently. Such rules shall be filed in the Tribal Court Clerk's office and available for public inspection.

§ 2.1.16. Action on Appeals. In any appeal before it, the Quechan Supreme Court shall have full authority to affirm, reverse, modify, or vacate any action of the Trial Division and may enter such order as is just or remand the case for the entry of a specified judgment, for a new trial, or for such further action in accordance with the Supreme Court's opinion or instructions.

§ 2.1.17. Court Fund. There is hereby authorized to be maintained by the Tribal Court Clerk under the supervision of the Chief Judge, a fund to be known as the Court Fund into which shall be deposited all fines, fees, penalties, costs, and other monies authorized or required by law to be paid to the Tribal Court. These funds shall be maintained by the Tribal Court and used exclusively for the purchase of supplies, materials, and personal property for the use of the Tribal Court, the maintenance of the Tribal Court law library,

and such other applications as shall be specifically authorized by law. The Tribal Court Fund shall not be used for the payment of salaries of any Tribal Court personnel.

This Chapter approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Chapter is newly added to the laws of the Quechan Indian Tribe.

Chapter 2.2
Tribal Court Judges

§ 2.2.1. Composition of the Tribal Court. The Tribal Court shall consist of one Chief Judge whose duties shall be regular and permanent, and such other judges who may be appointed or called into service as the need arises.

§ 2.2.2. Minimum Qualifications. To be eligible for selection as a Tribal Court judge a person shall:

A. Be either

1. An enrolled member of any tribe, or

2. The parent, child, or spouse of an enrolled member of the Quechan Tribe, or

3. Domiciled within the Fort Yuma Indian Reservation, or

4. An attorney

and

B. Have demonstrated moral integrity and fairness in his business, public and private life, and

C. Have never been convicted of any criminal offense under any law, except traffic offenses, for a period of three (3) years from the date of conviction; and

D. Have regularly abstained from the excessive use of alcohol or illegal drugs; and

E. Be at least twenty-five (25) years of age; and

F. Not hold or be a member of an appointed or elected position of the Tribe.

§ 2.2.3. Manner of Selection. Each Tribal Court judge shall be appointed by the Tribal Council by formal resolution. Listing of a person's name on the list of potential judges approved by the Council by formal resolution and maintained by the Tribal Court Clerk pursuant to section 2.2.4, shall be deemed to be appointment under this section; provided, however, that no judicial power or authority shall vest in such person until specifically designated as a Tribal Court judge pursuant to subsection 2.2.8; and provided

further that all such judicial power and authority shall be extinguished in such person upon resolution of the designated case or matter.

§ 2.2.4. **Term of Office.** The Chief Judge shall serve a three (3) year term of office beginning from the date of his confirmation and until his successor takes office, unless removed for cause, or by death, or resignation. Other judges shall serve terms as designated.

§ 2.2.5. **Oath of Office.** Before assuming judicial duties each judge shall take an oath to support and protect the Quechan Constitution and to administer justice in all causes coming before the Tribal Court.

§ 2.2.6. **General Duties and Powers of Judges.** All judges shall have the duty and power to conduct all court proceedings and issue all orders and papers in order to administer justice in all matters unless disqualified for conflict of interest or cause. In doing so judges shall:

A. Hold court sessions regularly at a designated time and place.

B. Undertake all duties and exercise all authority of a judicial officer under the law.

C. Hear and decide all cases properly brought before the Tribal Court.

D. Enter all appropriate orders and judgments.

E. Issue all appropriate warrants and subpoenas.

F. Keep all records as may be required.

§ 2.2.7. **Additional Duties and Powers of the Chief Judge.** The Chief Judge shall also be responsible for:

A. The administration of the Tribal Court.

B. Hear appeals from the Trial Division.

C. Perform any and all other duties as may be required for the operation of the Tribal Court.

D. Supervise the actions of the Trial Division and all personnel and officers of the Tribal Court.

§ 2.2.8. **Designations of Special Judges.** Until the tribal court system is fully operational and whenever an additional judge is needed to efficiently dispense with the business of the Tribal Court due to vacancies in office, disqualification of judges, or any other cause, a Tribal Court judge may designate a special judge to hear a specific named case or matter. Such special judge shall meet the qualifications set forth in subsection 2.2.2.

No special procedure need be followed in making such appointments. Special judges shall be compensated in the same manner as the Chief Judge.

§ 2.2.9. Compensation. The compensation of all Tribal Court judges, including the Chief Judge, shall be made by the Tribal Council from available funds. No judge shall have his compensation reduced during his term of office; provided, however, if funds are unavailable, the compensation of all judges may be reduced proportionately to the availability of funds.

§ 2.2.10. Removal.

A. A judge may be removed only for cause by the Tribal Council; provided, however, that a special judge appointed pursuant to section 2.2.8 may be removed by the Tribal Council only upon completion of the specific named case he was appointed to hear.

B. The only cause sufficient as a basis for removing the Chief Judge shall be final conviction of a felony or an offense involving moral turpitude, neglect of duty, or gross misuse of office.

§ 2.2.11. Disqualification; Conflict of Interest.

A. No judge shall hear any case in which he has a conflict of interest, which shall mean a direct financial, personal or other interest in the outcome of the case or is immediately related by blood or marriage to one of the parties. A judge should always strive to maintain the appearance of fairness, even if no formal conflict of interest exists.

B. Upon motion to the Chief Judge, the parties to a case or the judge may raise the question of conflict of interest, but persons not parties to the case cannot. If the Chief Judge decides that disqualification is appropriate, he shall appoint another judge to hear the matter.

Chapter 2.3
Tribal Court Clerk

§ 2.3.1. Establishment. There is hereby established a Tribal Court Clerk's office to be administered by one Tribal Court Clerk and such deputy court clerks as may be necessary. The Tribal Court Clerk shall be selected and appointed by the Chief Judge subject to the approval of the Tribal Council.

§ 2.3.2. Service to All Courts. Until such time as the Tribal Council determines that separate clerks are necessary to efficiently administer the business of the Tribal Court and funding is available, the Tribal Court Clerk shall serve as the Clerk of the Quechan Supreme Court, the Clerk of the Trial Division, and the Clerk of the Juvenile Court.

§ 2.3.3. Powers and Duties. The Tribal Court Clerk shall have the following powers and duties:

A. To undertake all duties and functions otherwise authorized by law, or necessary and proper to the exercise of a duty.

B. To supervise and direct work of all employees in his office.

C. To collect all fines, fees, and costs authorized by law and to deposit such funds to the Tribal Court fund.

D. To be audited at least once each year.

E. To administer oaths, certify a true copy of Tribal Court records, and to accurately keep each and every record of the Tribal Court.

F. To provide a record in the absence of a court reporter to accurately and completely record all proceedings and hearings of the Tribal Court.

G. To provide clerical services to the Tribal Court.

H. To act as librarian, and to keep and maintain the Tribal Court's law library.

I. To undertake all other duties assigned or delegated to the Tribal Court Clerk's office by tribal law or court rule.

§ 2.3.4. Maintenance of List of Approved Tribal Court Judges. The Tribal Court Clerk shall maintain a list of persons meeting the qualifications in section 2.2.2 and approved by the Tribal Council to act as special judges of the Tribal Court.

§ 2.3.5. Certification of True Copies. The Tribal Court Clerk is authorized to certify that a copy of any record in his office is a true and accurate copy of the record on file by signed stamp or writing placed on such copy, sealed with the seal of the Tribal Court Clerk's office.

Chapter 2.4
Tribal Court Bar

§ 2.4.1. Admission. To be admitted to the Tribal Court Bar, a person must: (1) be of good moral character, (2) sign and take the spokesperson's oath, (3) pay the Tribal Court bar admission fee, (4) be at least twenty-one (21) years of age, and (5) have a demonstrated knowledge of this Code, relevant tribal ordinances, the Indian Civil Rights Act, the Quechan Treaty, and other relevant federal statutes. The Tribal Council or the Chief Judge may require that an applicant demonstrate such knowledge by completing a written test. A spokesperson need not be an attorney.

§ 2.4.2. Tribal Court Bar Admission Fee. There shall be a nonrefundable $25.00 admission fee, payable to the Tribal Court Clerk, for admittance to the Tribal Court Bar. A judge may waive the admission fee for good cause shown.

§ 2.4.3. Spokesperson's Oath. All persons seeking to be admitted to the Tribal Court bar shall take the following oath:

I, _____, do solemnly swear:

1. I have read the Constitution of the Quechan Indian Tribe, the Quechan Law & Order Code, and the Indian Civil Rights Act and am familiar with the contents of those documents;

2. I will respect, honor, and obey the Constitution of the Tribe in all respects;

3. I will abide by the rules of court established by the Quechan Law & Order Code, the Tribal Court and the Quechan Tribal Council;

4. I will at all times maintain the respect due the Tribal Court and its officers and employees;

5. I will not advocate any lawsuit or request to the Tribal Court that appears to me to be unjust nor will I advocate any defense that is not honestly supported by tribal law, tradition and custom, unless it is in defense of a person charged with a crime;

6. I will advocate with truth and honor and will never to seek, by word or by deed, to mislead a Tribal Court judge or jury;

7. I will not, in or outside the courtroom, behave in such a way as to offend or dishonor the Tribal Court.

_____
Applicant

§ 2.4.4. Tribal Court Bar Roster. The Tribal Court Clerk shall assign a number to each spokesperson admitted to practice before the Tribal Court and shall maintain a roster of all spokespersons admitted to practice before the Tribal Court. The Tribal Court Clerk shall also keep on file the signed oaths of all spokespersons.

§ 2.4.5. Effect of Nonadmission of Representative. All contacts made with the Tribal Court, including the filing of legal documents, shall have no legal effect, unless they are made by a person admitted to the Tribal Court Bar or by a person representing himself in a matter before the Tribal Court.

§ 2.4.6. Disbarment. Any spokesperson violating the spokesperson's oath shall be subject to disbarment; provided, however, that no spokesperson may be disbarred during an appearance in Tribal Court. After investigation, a judge shall prepare in writing a complaint

against such spokesperson, including reasons for disbarment. Within ten (10) days of receipt of such complaint, the Trial Division shall hold a hearing at which time the spokesperson involved may present witnesses and a defense of his actions. The judge who prepared the complaint shall not sit as the judge at the Trial Division hearing. There shall be no right to a jury at such hearing.

§ 2.4.7. Appeal. Any person denied admission to the Tribal Court bar or any person who is disbarred may appeal to the Quechan Supreme Court in accordance with the procedures established in this Code. Such person or spokesperson shall have the right to a hearing within ten (10) days of his denial or disbarment and shall have the right to present witnesses and present a defense. The judge who prepared the complaint shall not sit as the judge of the Supreme Court appeal. The Quechan Supreme Court decision shall be final.

This Chapter approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Chapter is newly added to the laws of the Quechan Indian Tribe.

QUECHAN LAW AND ORDER CODE

TITLE 3
COURT PROCEDURE: GENERAL PROVISIONS

Chapter 3.1
General Provisions

§ 3.1.1. Right to a Spokesperson. Any party appearing before the Tribal Court shall have the right, at the party's own expense, to a spokesperson to assist him in presenting his case.

§ 3.1.2. Invalidity of Contacts and Filings with Tribal Court by Non-Spokespersons. In accordance with section 2.4.5, all contacts made with the Tribal Court, including the filing of legal documents, shall have no legal effect unless they are made by a person admitted to the Tribal Court Bar or by a person representing himself in a matter before the Tribal Court.

§ 3.1.3. Time; Computation and Enlargement. In computing any time period established by this Code, the day of the act shall not be included but the last day of the time period shall be included. Any period that ends on a Saturday, Sunday, or tribal holiday will be deemed to end on the next business day. Whenever a party has been served by first-class mail, three (3) days shall be added to the prescribed period.

§ 3.1.4. Evidence. The Tribal Court is not bound by federal, state or common law rules of evidence and may use its discretion as to what evidence it deems necessary, relevant, just and probative.

§ 3.1.5. Clerk's Return of Conformed Copies. Upon written request, the Tribal Court Clerk may return a conformed copy of any document filed with the Tribal Court to the filing party; provided, however, that the requesting party provides (i) the copy to be conformed; and (ii) an addressed envelope with sufficient prepaid postage.

Chapter 3.2
General Trial Procedure

§ 3.2.1. Order of Trial. Trials shall proceed with opening statements, presentation of evidence, closing arguments, jury instruction, jury deliberation, and verdict unless the Trial Division, in its discretion, otherwise directs.

§ 3.2.2. Testimony. The Trial Division shall take oral testimony of witnesses in open court and under oath, unless otherwise provided by law.

§ 3.2.3. Witness Fee. A fee shall be paid to witnesses appearing in criminal and civil matters at the federal hourly minimum wage scale plus actual expenses incurred. Mileage fees shall not exceed the federal mileage rate. These fees shall be taxed as court costs to the pending action.

§ 3.2.4. **Exceptions Unnecessary.** Formal exceptions to court rulings or orders are unnecessary, but a party must make his objections and the grounds known to the judge.

§ 3.2.5. **Jury Instruction.** Any party may file written requests that the judge instruct the jury on the law as set forth in the requests. The judge shall instruct the jury as to the law of the case and shall give the jury a copy of the written instructions. The judge must explain to the jury which party has the burden of proving each issue of fact.

§ 3.2.6. **Jury Deliberations.** Upon retiring the jury must be kept together in a convenient place and under the charge of a court officer until they reach a verdict. Prior to rendering the verdict, the jury is prohibited from communication with any person concerning the state of their deliberations or the verdict agreed upon.

Chapter 3.3
Jurors

§ 3.3.1. **Eligibility of Jurors; Jury List.** Any person who is at least eighteen (18) years of age and who has resided on the Reservation for at least one year shall be eligible to be a juror. A person may decline jury duty upon good cause demonstrated to the Chief Judge. By January 31 of each year, the Tribal Court Clerk shall prepare a list of eligible jurors for that calendar year.

§ 3.3.2. **Exemptions.** The following persons are not eligible to serve as jurors:

A. Judges of the Tribal Court or their families;

B. Persons who have been convicted of any felony in any jurisdiction, unless such persons have been fully restored to their civil rights.

§ 3.3.3. **Selection.** The judge shall select the jury, which shall consist of six jurors selected at random from the current list of eligible jurors. At his sole discretion, the judge may ask the jurors questions submitted by the parties.

§ 3.3.4. **Challenges.** A party may challenge and have dismissed three jurors without cause. There shall be no limit to challenges for cause, but the judge shall decide whether the party has established sufficient cause for dismissal.

§ 3.3.5. **Jury Oath.** After selection of the jury and prior to the opening statements of the parties, the judge shall place the jury under oath or affirmation to determine the action before them exclusively upon the evidence presented in the courtroom and the law as instructed by the judge and to return their true verdict without partiality.

§ 3.3.6. Jury Fee. Every person who is required to attend Tribal Court for selection or service as a juror is entitled to a fee for each day his presence is required. The fee shall be $15.00 per day or as otherwise set by the Chief Judge. Juror fees shall be taxed as court costs to the pending action.

This Title approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Title is newly added to the laws of the Quechan Indian Tribe.

QUECHAN LAW AND ORDER CODE

TITLE 4
COURT PROCEDURE: CRIMINAL

Chapter 4.1
Commencement of Criminal Action: Complaint and Summons

§ 4.1.1. Guarantee of Civil Rights. All accused persons are hereby guaranteed all civil rights secured under the Quechan Constitution and under federal laws specifically made applicable to tribal courts.

Chapter 4.2
Commencement of Criminal Action: Complaint and Summons

§ 4.2.1. Criminal Complaints. Prosecution for any violation of Title 13 of this Code shall be by complaint. No complaint shall be valid unless it bears the signature of the complaining witness, witnessed by a tribal peace officer. Citations issued and signed by tribal peace officers pursuant this Code shall satisfy this section.

§ 4.2.2. Time Limitation on Filing of Criminal Complaint. No complaint shall be valid if the offense charged is alleged to have been committed more than one (1) year from the date of the complaint, except as to Class A offenses, for which the period of limitation shall be two (2) years. If the complaint has been filed within the limitation period, there shall be no time limitation on further proceedings in the prosecution of the complaint, including apprehension, arrest, trial and sentencing, except as provided for in this Code.

§ 4.2.3. Citation in Lieu of Detention: Determination to Issue. Whenever a person is arrested for an alleged violation of this Code or any other tribal law, the arresting officer or any other authorized peace officer may serve upon such person a citation and notice to appear in court in lieu of keeping the person in custody or requiring bail or bond. In determining whether to issue a citation and notice to appear, the peace officer may consider the following factors:

A. Whether the person has identified himself satisfactorily;

B. Whether detention appears reasonably necessary to prevent imminent bodily harm to himself or to another, injury to property or breach of the peace;

C. Whether the person has ties to the community or is a local resident, so as to provide reasonable assurance of his appearance before the Tribal Court, or whether there is substantial likelihood that he will refuse to respond to the citation; and

D. Whether the person previously has failed to appear in response to a citation issued pursuant to tribal law.

§ 4.2.4. Citation In Lieu of Detention: Contents.

A. The citation shall include the name of the offender, his address, date of birth, sex, the date, time, place and description of the offense charged, the date on which the citation was issued, and the name of the citing officer. A space shall be provided for the offender to sign a promise to appear.

B. To secure his release, the offender must give his written promise to appear in Trial Division as required by the citation.

C. The citation shall also state the time and place at which an offender shall be arraigned before the Trial Division, which shall not be less than twenty-four (24) hours nor more than forty-eight (48) hours after the date of the citation.

§ 4.2.5. Citation in Lieu of Detention: Effect, Procedure.

A. The citation, when completed and signed by a tribal peace officer, shall serve as the complaint for the purposes of prosecution in Tribal Court.

B. If a defendant fails to appear for arraignment, the Trial Division may issue a warrant of arrest, and the defendant may be charged with an offense.

§ 4.2.6. Prearraignment Detention; Time Limitation. Upon arrest, a person may be detained for a reasonable time, but in no event more than twenty-four (24) hours, so that the person's status as a member of a federally recognized Indian tribe can be determined.

§ 4.2.7. Arraignment; Time. If in custody, defendant shall be arraigned within twenty-four (24) hours after arrest. If issued a citation in lieu of detention, a defendant shall be arraigned within forty-eight (48) hours after issuance of the citation.

§ 4.2.8. Arraignment: Reading of Complaint and Procedure. At arraignment, the complaint shall be read and explained to the defendant. The defendant shall appear or be brought before the Trial Division. The defendant shall again be informed of his rights under tribal and federal law, including his right to counsel at his own expense. If the defendant desires but does not presently have a spokesperson, he will be given a reasonable time to secure such spokesperson before entering his plea. The defendant shall plead guilty or not guilty. If the defendant refuses to plead, the Trial Division shall enter the fact and a plea of "not guilty" on his behalf. The Trial Division shall cause the defendant to be informed of the charge against him and the defendant's right to appear and defend the charge either in person or with a spokesperson. The defendant shall be provided with a copy of the complaint if he has not before received one.

§ 4.2.9. Arraignment: Trial to Be Held Within 30 Days.

A. Upon an entry of a not-guilty plea at arraignment, the Trial Division shall set trial to be held no more than thirty (30) days from the date of arraignment unless continued for cause or at the request of the defendant.

B. When the defendant is summoned before Trial Division pursuant to a citation in lieu of detention as provided herein, the defendant shall appear on the date indicated on the citation to hear the charges against him, be arraigned, post bail, enter a plea, and be assigned a trial date. The Trial Division shall set trial to be held no more than thirty (30) days from the return date on the citation unless continued for cause or at the request of the defendant.

C. A defendant may post bail, enter a plea, and request a trial date prior to the return date on the citation if the defendant so desires; provided, however, that bail or other bond satisfactory to the Trial Division is posted.

Chapter 4.3
Bail, Bonds and Fines

§ 4.3.1. Bail and Bonds; Generally. Except as provided herein, every person charged with any offense under this Code may be admitted to bail. Bail shall be by cash deposit or by assurance of two reliable members of the community resident within the boundaries of the Reservation who shall execute an agreement to the effect that they will pay any bail forfeited. In no case shall the bail specified in the agreement exceed twice the maximum fine set by the section of this Code for the offense for which the accused has been charged. The cash or bond agreement shall be executed before the Tribal Court Clerk or any bonded employee authorized by the Tribal Council to accept bail. All such bonds shall be promptly filed with the Tribal Court Clerk.

§ 4.3.2. Personal Recognizance in Lieu of Bail. In lieu of bail, a person charged with any offense may be released on his personal recognizance without posting bail or bond, pursuant to the discretion of the Trial Division. In determining whether to grant personal recognizance, the Trial Division may consider the following factors:

A. Whether the person has identified himself satisfactorily;

B. Whether detention appears necessary to prevent imminent bodily harm to himself or to another, injury to property, or breach of the peace;

C. Whether the person has ties to the community or is a local resident, so as to provide reasonable assurance of his appearance before the Trial Division or whether there is substantial likelihood that he will refuse to appear for trial; and

D. In any case, to secure his release, the person must give his written promise to appear in court as required by the citation.

§ 4.3.3. Bail Schedule. The Chief Judge may establish a bail schedule for all offenses under this Code. Any person arrested and taken into custody for violation of this Code may be released before arraignment upon posting the specified bail with the Tribal Court Clerk or other person authorized by the Chief Judge to receive bail, unless release on personal recognizance or detention is ordered by the Trial Division. As a condition to any release under this section, such person shall sign a written promise to appear in court at the time set for arraignment. Failure to appear may result in forfeiture of bail and arrest.

§ 4.3.4. Denial of Bail; Detention. The Trial Division may deny a person release on bail if it appears reasonably certain that the person will pose a serious threat to the safety and well-being of himself, the Reservation or its residents if released or if there is a substantial likelihood that the person will not appear for trial.

Chapter 4.4
Criminal Trial

§ 4.4.1. Payment of Fine Without Trial. The Trial Division in its discretion may allow the payment of a fine without trial. The defendant shall advise the Trial Division, either in person, by telephone or in writing that he is willing to enter a guilty plea and pay the stated fine. In such cases, no court appearance shall be required; provided, the fine must be paid prior to the date set for the defendant's trial.

§ 4.4.2. Standard of Proof. The Tribe shall prove each element of all criminal charges beyond a reasonable doubt.

§ 4.4.3. Trial by Jury; Demand. Any person accused of an offense punishable by imprisonment may demand a jury trial. Such demand may be made by oral demand in open court or by filing a written demand with the Tribal Court Clerk. Any demand must be made at least seven (7) days before the date set for trial or the right shall be deemed waived.

Chapter 4.5
Criminal Judgments

§ 4.5.1. Criminal Verdicts.

A. By Jury. In cases tried with a jury, all jury members must agree on a verdict, which shall be returned to the defendant in open court.

B. By Judge. In a case tried without a jury, the Trial Division shall make a general finding of guilt or innocence and shall, upon request of any party, make specific findings that shall be set out in a written decision. If the parties do not request a written decision, the Trial Division shall render his verdict in open court at the end of the presentation of all evidence and arguments and in the presence of the defendant.

§ 4.5.2. **Lesser Offenses.** The defendant may be found guilty of a lesser offense, necessarily included within the offense charged without the necessity of having been formally charged with such lesser offense.

§ 4.5.3. **Sentencing: Time.** Upon a plea of guilty, the Trial Division may impose sentence at once or at a later date not to exceed fifteen (15) days at its discretion.

§ 4.5.4. **Sentencing: Imposition, Deferral, Suspension.** The Trial Division may suspend all or any part of the fine or sentence. The Trial Division may defer all or any portion of a sentence or fine on such terms and conditions as the Trial Division may determine, including the requirement of a reimposition of such sentence or fine in the event of violation of such terms or conditions. Pending sentence, the Trial Division may commit the defendant to jail or continue the bail. Before imposing sentence, the Trial Division shall allow a the defendant to speak on his behalf and to present any information that would help the Trial Division in setting the punishment.

§ 4.5.5. **Court Costs.** The Trial Division may assess the costs of the case against the defendant if the defendant is found guilty. Such costs shall consist of the expenses of voluntary witnesses, the fees of jurors, and any further incidental expenses or fees connected with the procedure required by this Code before the Trial Division.

Chapter 4.6
Probation

§ 4.6.1. **Terms and Conditions.**

A. The Trial Division shall specify the terms and conditions of probation by rules or orders. Each offender placed on probation shall be given a written statement of the terms and conditions of his probation and shall have such terms and conditions fully explained.

B. The Trial Division shall review the terms and conditions of probation and the progress of each offender placed on probation at least once every six (6) months.

C. The Trial Division may release the offender from probation or modify the terms and conditions of probation at any time, but any offender who has complied satisfactorily with the terms and conditions of his probation for a period of two (2) years shall be released from probation, and the jurisdiction of the Trial Division shall be terminated.

§ 4.6.2. **Revocation of Probation.** The Police Chief may commence a proceeding to revoke probation by filing of a petition to revoke probation. Such petition shall be prepared and filed by the Police Chief whenever he has reasonable cause to believe that the offender has violated a term or condition of his probation.

§ 4.6.3. Hearing on Revocation.

A. The Trial Division shall set a hearing on the petition to revoke and shall give notice to the offender and his spokesperson, if any, and the Tribal Prosecutor.

B. The offender shall be given a copy of the petition to revoke and shall have the right to be represented by a spokesperson at the hearing, at the offender's own cost, and shall be entitled to the issuance of compulsory process for the attendance of witnesses.

C. The Trial Division shall conduct a hearing on the petition to revoke as soon as possible.

D. The Trial Division shall not revoke probation except upon a showing by clear and convincing evidence by the Police Chief that the offender violated a term or condition of his probation. In all other respects, a proceeding to revoke probation shall be governed by the procedures, rights and duties applicable to a criminal trial.

E. If the Trial Division finds that the offender violated the terms and conditions of probation, it may modify the terms and conditions of probation, revoke probation, or take such other action that is in the best interest of the offender and the Tribe.

F. If the Trial Division finds that the offender did not violate the terms and conditions of his probation as alleged, it shall dismiss the proceedings and continue the offender on probation under the terms and conditions previously described.

This Title approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Title is newly added to the laws of the Quechan Tribe.

QUECHAN LAW AND ORDER CODE

TITLE 5
COURT PROCEDURE: CIVIL

Chapter 5.1
Commencement of Action: Complaint and Summons

§ 5.1.1. Commencement of Civil Action. A civil action is commenced by filing a civil complaint with the Trial Division.

§ 5.1.2. Civil Complaints; Form; Signature. A civil complaint shall clearly and concisely state the facts from which the action arises, (ii) the remedy requested; and (iii) bear the signed certification of the plaintiff that plaintiff has made a reasonable investigation of the allegations in the complaint, that the allegations are true, complete and accurate to the best of his knowledge, and that the complaint is not made to harass the defendants or to hinder other valid legal process. The complaint shall be filed with the Tribal Court Clerk.

§ 5.1.3. Time Limitation on Filing of Civil Complaint. A civil complaint shall be invalid unless it is signed, filed and served upon each defendant within three (3) years of the event complained of.

§ 5.1.4. Filing Fee. A complaint shall be invalid unless the plaintiff pays to the Tribal Court Clerk a filing fee in the amount of $25.00, or as otherwise set by the Chief Judge. The Tribal Division may waive the fee upon the plaintiff's showing of undue hardship. No fee shall be charged if the Tribe is the plaintiff.

§ 5.1.5. Notice by Summons. A civil action is begun against a defendant when (i) a valid complaint is filed with the Tribal Court Clerk and (ii) a true and correct copy of the complaint and summons are served upon the defendant in accordance with this Code. The summons shall be attached to a copy of the complaint and shall require each defendant to appear before the Trial Division at the time and place specified, which shall not be less than twenty (20) days from the date of service of the complaint and summons.

§ 5.1.6. Service by Parties; Documents Required to be Served; Methods; Proof. A party shall serve all documents filed with the Tribal Court upon all parties to the action, along with proof of service, by one of the following methods:

A. Certified mail, return receipt requested. The serving party shall file a copy of the return receipt with proof of service.

B. Personal service by delivery of a true copy of the document by a person over 18 years old and not a party to the action.

C. First-class mail, postage prepaid.

The Tribal Court is in no way responsible for service of a party's documents. Each party shall bear its own costs of service.

§ 5.1.7. Service by the Tribal Court; Documents Required to be Served; Methods; Proof. The Tribal Court Clerk shall serve upon each party to an action all orders, decisions, judgments and any other communications between the Tribal Court and any party to an action pending before the Tribal Court. Such service shall be by first-class mail, postage prepaid, and no proof of service is required.

§ 5.1.8. Extraterritorial Service of Process Authorized. Service of process by which an action is instigated may be made outside the territorial limits described in section 1.1.1.A in the following cases in addition to any circumstances specifically or otherwise provided for:

A. In all actions arising under Title 5 of this Code or the Indian Child Welfare Act;

B. In all actions arising in contract where the contract was entered into, or some material portion thereof was to be performed, within the tribal jurisdiction; or

C. In all actions arising out of the negligent operation of an automobile within the tribal jurisdiction by a nonresident when an injury to person or property resulted within the tribal jurisdiction from the negligent operation of the motor vehicle.

Chapter 5.2
Answer and Motions

§ 5.2.1. Answer: Time; Form. Within twenty (20) days of being served with a complaint, a defendant shall file an answer with the Tribal Court Clerk. The answer shall respond concisely to the complaint, with the paragraphs numbered to match the allegations in the complaint. The answering party shall state his defenses to each claim asserted in the complaint and shall admit or deny the allegations. If the answering party is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state. This type of answer has the effect of a denial. The answer shall bear the signed certification of the answering party stating that he has made a reasonable investigation of the allegations in the complaint and that the answers are true, complete and accurate to the best of his knowledge.

§ 5.2.2. Answer: Default. If an answer is not made within the required 20-day period and absent good cause to the contrary, all allegations shall be deemed admitted. The plaintiff shall be entitled to an order of default, granting in full or in part the relief sought.

§ 5.2.3. Motions; Form. A request to the Tribal Court for action shall be by motion which, unless made during a hearing or trial, shall:

A. Be in writing;

B. State the legal and factual basis for the request; and

C. State the relief or order sought.

D. All motions and supporting legal memoranda shall be signed by the moving party or their spokesperson with his individual name, address and telephone number. The signature shall be the signator's certificate that he has read the document signed; that the statements contained in the document are true, accurate and complete to the best of his knowledge; and that the document signed is not made or filed with the intent to harass any person or to delay legal proceedings.

§ 5.2.4. Pretrial Conference; Scheduling Order.

A. The Trial Division may direct the parties to establish a pretrial schedule to aid in the disposition of the action.

B. The Trial Division may issue an order that establishes the scope and schedule of all discovery, pretrial motions, dispositive motions, witness and exhibit lists, and any other matters relating to a particular case. Such order when entered controls the subsequent course of the action, unless modified to prevent manifest injustice.

§ 5.2.5. Dismissal of Actions without Adjudication.

A. Dismissal By Plaintiff.

1. Before Answer Filed. Before any party has answered the complaint, a plaintiff may dismiss an action without permission of the Trial Division by filing a notice of dismissal or by filing a stipulation of dismissal signed by all parties who have appeared in the action. Such dismissal may be with or without prejudice, and the plaintiff may be assessed all court costs and fees incurred.

2. After Answer Filed. Once a party has answered the complaint, a plaintiff may dismiss an action by moving the Trial Division for an order of dismissal or by filing a stipulation of dismissal signed by all parties who have appeared in the action. Such dismissal shall be with prejudice, and the plaintiff may be assessed all court costs and fees incurred.

B. Involuntary Dismissal By Defendant. The defendant, without waiving his right to offer evidence, may move for dismissal on the ground that:

1. The plaintiff has failed to prosecute or to comply with procedures or any order of the Tribal Court. Such dismissal may be with or without prejudice, and the plaintiff may be assessed all court costs and fees incurred.

2. The facts and the law the plaintiff has shown no right to relief. The Trial Division may then determine the facts and render judgment. A dismissal on the merits operates as an adjudication upon the merits, unless otherwise specified. Such

dismissal shall be with prejudice, and the plaintiff may be assessed all court costs and fees incurred.

C. **Involuntary Dismissal by Trial Division.** The Tribal Court Clerk shall send notice to all parties in actions in which no filing has been made for one hundred twenty (120) days. The notice shall state that, unless good cause to the contrary is shown, the action will be dismissed by the Trial Division for failure to prosecute and that if no response is received or if good cause is not demonstrated, such dismissal shall occur within twenty (20) days of the notice. Such dismissal may be with or without prejudice, and the plaintiff may be assessed all court costs and fees incurred.

Chapter 5.3
Civil Trials

§ 5.3.1. Standard of Proof: Civil. In a civil case, a party shall prove each of its claims by the greater weight of the evidence.

§ 5.3.2. Civil Jury Trial; Request; Fee; Waiver.

A. The right to trial by jury as declared by the Quechan Constitution, this Code and the Indian Civil Rights Act shall not be violated.

B. Civil actions may be tried by a jury upon written request filed by any party at least seven (7) days before the trial date and upon the requesting party posting a fee or other security in an amount to be set by the Chief Judge to cover costs, disbursements and jury fees in the case. The Trial Division may apportion such costs among the parties or waive the fee upon a showing of good cause.

C. The failure of a party to serve a demand constitutes a waiver of a trial by jury.

Chapter 5.4
Civil Judgment

§ 5.4.1. By Jury. In cases tried by jury, at least five (5) of the six (6) jury members must agree on a verdict, which shall be returned to the judge in open court.

§ 5.4.2. By Judge. In cases tried without a jury, the Trial Division may render its verdict in open court at the end of the presentation of all evidence and arguments or it may take the case under advisement and reset the matter for the entry of a verdict at a later time, provided that such verdict shall be entered no later than thirty (30) days after the trial.

§ 5.4.3. Judgments and Decedents' Estates. A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the Tribal Court to distribute decedents' estates.

Chapter 5.5
Awards of Damages, Fees and Costs

§ 5.5.1. Damages; Compensatory. Where the trier of fact finds that a plaintiff's complained-of injury was the result of carelessness of the defendant, the trier of fact may require the defendant to pay compensation to the plaintiff for the immediate loss the plaintiff suffered; provided, however, that no award of compensatory damages may be made against the Tribe, trial entities, or their employees or officials unless the Tribal Council has specifically and expressly waived its sovereign immunity with respect to such an award.

§ 5.5.2. Damages; Punitive. Where the trier of fact finds that a defendant deliberately inflicted the complained-of injury upon the plaintiff, the trier of fact may require the defendant to pay to the plaintiff punitive damages, equal to two times the immediate loss and in addition to other damages awarded, to the plaintiff; provided, however, that no award of punitive damages may be made against the Tribe, trial entities, or their employees or officials unless the Tribal Council has specifically and expressly waived its sovereign immunity with respect to such an award.

§ 5.5.3. No Awards of Fees of a Spokesperson or Attorney. The Tribal Court shall award no attorneys fees to any party but shall require each party to bear the costs of their legal representation, whether by a spokesperson or an attorney.

§ 5.5.4. Awards of Trial Division Costs. The judge may assess the costs of the case incurred by the Tribal Court against the losing party or parties or, where in the interest of justice require, apportion the cost equally among the parties; provided, however, that no award of court costs may be made against the Tribe, trial entities, or their employees or officials unless the Tribal Council has specifically and expressly waived its sovereign immunity with respect to such an award. Such costs may consist of the expenses of voluntary witnesses for which either party may be responsible under this Code, jury fees, and any other expenses the judge may direct.

Chapter 5.6
Injunctive Relief

§ 5.6.1. Definitions. As used in this Chapter, unless the context clearly indicates otherwise:

A. An injunction is a Trial Division order in a civil case requiring the party to whom it is directed to do or refrain from doing a particular thing, either for a limited period or permanently.

B. A preliminary injunction is an injunction issued after five (5) days' written notice to the parties and an opportunity to be heard has been afforded to the parties but before a final determination of the legal rights of the parties. A preliminary injunction automatically expires when a final determination is made.

C. A temporary restraining order is issued without formal notice to other parties and is effective for only a short period of time or until a hearing is held to determine the propriety of granting a preliminary injunction.

§ 5.6.2. Form and Scope of Injunction or Restraining Order; Service. Every injunction, preliminary injunction and restraining order shall be specific in terms, shall describe in reasonable detail, established by clear and concise statements contained in a sworn affidavit made by the person seeking the injunction, the act or acts sought to be restrained. The Trial Division may issue a final injunction only when the rights of the parties are determined by a final court order. If issued, the injunction is binding only upon the parties to the action, their officers, agents, servants, employees, spokesmen and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

§ 5.6.3. Preliminary Injunctions; Notice; Grounds; Duration.

A. Notice. No preliminary injunction shall be issued without five (5) days' written notice to all parties and a hearing before the Trial Division which shall provide the adverse party with an opportunity to be heard.

B. Grounds. The Trial Division may issue a preliminary injunction when it appears from the pleadings or from the sworn testimony or other evidence given in court that:

1. Based on the allegations in the complaint, the plaintiff has a colorable claim under tribal law; and

2. The relief requested in the application for the preliminary injunction consists only of requiring the defendant to do or refrain from doing a particular thing; and

(a) The defendant is doing or is about to do, or is threatening, or is procuring or causing to be done some act or omission during the litigation would produce great or irreparable injury to the plaintiff; or

(b) The defendant is doing or is about to do, or is threatening, or is procuring or causing to be done some act or omission in violation of the rights of plaintiff.

§ 5.6.4. Temporary Restraining Orders; Requirements; Contents and Filing; Duration.

A. Sworn Application. The Trial Division shall grant no temporary restraining order except upon written application therefor made under oath.

B. Requirements. The Trial Division shall not issue a temporary restraining order without reasonable written or oral notice to the adverse party or his spokesperson or attorney unless:

1. It clearly appears from specific facts shown by the application that immediate and irreparable injury, loss or damage will result to the applicant before the defendant can be heard in opposition, and

2. The application describes the efforts, if any, which have been made to give notice to the defendant and explains the reasons supporting the applicant's claim that formal notice should not be required.

C. Contents and Filing. Every temporary restraining order shall be endorsed by the Trial Division with the date and hour of issuance; shall be filed without delay in the Tribal Court Clerk's office and entered on record; shall define the injury and state why it is irreparable and why the order was granted without formal notice and shall expire by its own terms at a date certain, as provided by paragraph D. below.

D. Duration. Every temporary restraining order shall expire by its own terms within such time after entry, not to exceed five (5) days, as the Trial Division shall fix, unless within the time so fixed by the Trial Division, for good cause shown, extends the order for a like period of time or unless the party against whom the order is directed consents that it may be extended for a longer period. The Trial Division shall enter on the record the reasons for such extension.

E. Expeditious Hearing for Preliminary Injunction Required. In case a temporary restraining order is granted, a hearing to determine whether a preliminary injunction shall be granted shall be set down for hearing at the earliest possible time and takes precedence over all other matters except older matters of the same character. If the plaintiff does not appear at such hearing to argue for a preliminary injunction, the Trial Division shall dissolve the temporary restraining order, regardless of the time fixed for its expiration. On two (2) days' notice to the plaintiff or on such shorter notice as the Trial Division Court may prescribe, the defendant may appear and move for the dissolution or modification of the temporary restraining order and in that event the Trial Division shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

§ 5.6.5. Security. Except for good cause shown, the Trial Division shall issue no restraining order or preliminary injunction unless the applicant provides security in such sum as the Trial Division, in its discretion, deems proper for the payment of such costs and damages that might be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Tribe, or of any officer or agency of either.

A surety upon a bond or undertaking under this Code submits to the jurisdiction of the Tribal Court and irrevocably appoints the Trial Court Clerk as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His

liability may be enforced on motion without the necessity of an independent action. The motion may be served on the Tribal Court Clerk who shall immediately mail copies to the persons giving the security, if their addresses are known.

Chapter 5.7
Judgments of Other Courts

§ 5.7.1. Petition to Enforce Foreign Judgment. Any person may petition for enforcement of a civil judgment from another tribal court or a state or federal court as a judgment of the Trial Division. Such request shall be in writing and shall be treated as a complaint. The plaintiff shall be the person seeking enforcement and the defendant shall be the person against whom enforcement is sought, regardless of the designation of the parties in the original judgment. The petition shall be considered a complaint before the Trial Division and shall served upon the defendant in accordance with section 5.1.5.

§ 5.7.2. Review of Original Judgment by Trial Division. The Trial Division shall review the application within five (5) days of its filing. The Trial Division shall then decide whether or not to enter the judgment of the other court as a Tribal Court judgment. The Trial Division shall have full and total discretion regarding this matter and shall be guided by the best interests of the Quechan Indian Tribe and its Reservation.

§ 5.7.3. Payment of Judgment. Upon the entry of the order declaring the foreign judgment to be a judgment of the Tribal Court, all provisions of this Code regarding enforcement of judgments shall be applied.

This Title approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Title is newly added to the laws of the Quechan Indian Tribe.

QUECHAN LAW AND ORDER CODE

TITLE 6
JUVENILE PROCEDURE

Chapter 6.1
General Provisions

§ 6.1.1. Establishment. There is hereby established for the Quechan Tribe of the Fort Yuma Reservation a court to be known as the Quechan Juvenile Court.

§ 6.1.2. Purpose. The purposes of this Title are to:

A. Secure for each child subject to this Title such care and guidance, preferably in his own home, as will best serve his welfare and the interests of the Tribe and society in general;

B. Preserve and strengthen the ties between the minor and the Tribe whenever possible;

C. Preserve and strengthen family ties whenever possible and to strengthen and improve the home and its environment when necessary;

D. Remove a minor from the custody of his parents only when his welfare and safety or the protection of the public would otherwise be endangered; and

E. Protect the peace and security of the community and its individual residents from juvenile violence or law-breaking.

This Title shall be liberally construed to fulfill these purposes.

§ 6.1.3. Juvenile Court Judge. The Quechan Juvenile Court shall consist of one judge to be appointed by the Chief Judge.

§ 6.1.4. Juvenile Court Clerk. The Tribal Court Clerk shall also serve as the Juvenile Court Clerk, unless and until the Tribal Council determines to fill the position separately.

§ 6.1.5. Juvenile Proceedings Not Admissible Against a Minor. No adjudication, disposition or evidence given in proceedings brought under this Title shall be admissible against a minor except in subsequent proceedings under this Title concerning the same minor.

§ 6.1.6. Rights of Parties in Proceedings Under This Title; Notice. In proceedings under this Title, the minor and the minor's parent, guardian or custodian shall be entitled all rights secured to them by federal and tribal law including but not limited to:

A. Right to counsel or a spokesperson at their own expense;

B. Right not to incriminate themselves.

C. Right to introduce evidence, to be heard on their own behalf, and to summon and examine witnesses.

At their first appearance before the Juvenile Court, the judge shall fully advise the minor and the parents, guardian or other legal custodian of their legal rights.

§ 6.1.7. Procedure. Procedures specified in this Title shall apply in all juvenile proceedings except to the extent that if any procedure is not specifically addressed, then the Tribal Court Rules of Civil Procedure shall apply.

§ 6.1.8. Hearings. Hearings shall be held before the Juvenile Court without a jury and may be conducted informally. The general public shall be excluded unless the Juvenile Court determines that it is in the best interest of the minor to allow the general public to attend. The Juvenile Court shall admit only persons having a real interest in the case.

A. A verbatim record shall be taken of all proceedings that might result in the deprivation of custody, unless waived by the parties in the proceeding and so ordered by the Juvenile Court.

B. The name, picture, place of residence, or identity of any child, parent, guardian, other custodian, or person appearing as a witness in juvenile proceedings under this Title shall not be published in any public media.

§ 6.1.9. Sealed Records. In any juvenile proceeding the records shall be sealed until the juvenile reaches the age of emancipation or no sooner than two (2) years after the Juvenile Court's jurisdiction terminates, whichever occurs later. When the records have been sealed, all proceedings shall be deemed never to have occurred, and all index references shall be deleted. Copies of the order sealing such records shall be sent to each agency or official named in the proceedings. Future inspection of such records may be permitted thereafter only by court order.

Chapter 6.2
Definitions

§ 6.2.1. Adjudicatory Hearing. "Adjudicatory hearing" means a hearing to determine whether the allegations of a juvenile offender complaint are supported by the evidence.

§ 6.2.2. Delinquent Act. "Delinquent act" means an act committed by a minor that, if it were committed by an adult, would be designated a crime under this Code.

§ 6.2.3. **Detention.** "Detention" means placement of a minor in a physically restrictive facility.

§ 6.2.4. **Disposition Hearing.** "Disposition hearing" means a hearing in which the Juvenile Court must determine what treatment should be ordered for the family and the minor and what placement of the minor should be made during the period of treatment.

§ 6.2.5. **Juvenile Court.** The Juvenile Court is the Quechan Tribal Court exercising jurisdiction under this Title.

§ 6.2.6. **Juvenile Court Judge.** A "Juvenile Court judge" is any judge of the Tribal Court exercising jurisdiction under this Title.

§ 6.2.7. **Juvenile Offender.** A "juvenile offender" is a minor who commits a delinquent act.

§ 6.2.8. **Minor.** A "minor" is (a) an Indian person under eighteen (18) years of age; or (b) an Indian person eighteen (18) years of age or older who has been arrested or against whom a juvenile offender petition has been filed in the Juvenile Court prior to his eighteenth birthday; or (c) an Indian child eighteen (18) years of age or older who is under the continuing jurisdiction of the Juvenile Court.

Chapter 6.3
Initiation of Juvenile Offender Proceeding

§ 6.3.1. **Juvenile Offender Petition.** Juvenile offender proceedings under this Title shall be instituted by a juvenile offender petition filed by the presenting officer on behalf of the Tribe and in the interest of the minor. The petition shall state:

A. The name, birthdate and residence of the minor;

B. The names and residences of the minor's parent, guardian or custodian;

C. A citation to the Tribal Code provision which the minor is alleged to have violated; and

D. A plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred.

E. If the minor is in detention or shelter care, the place of detention or shelter care and the time the minor was taken into custody.

§ 6.3.2. **Juvenile Warrant.** The Juvenile Court may issue a warrant in accordance with Chapter 2.2 of this Code directing that a minor be taken into custody if the Juvenile Court finds there is probable cause to believe the minor committed the delinquent act alleged in the petition.

Chapter 6.4
Preadjudicatory Shelter Care and Detention

§ 6.4.1. Preadjudication Custody. A minor may be taken into custody by a tribal peace officer if:

A. The officer has reasonable grounds to believe a delinquent act has been committed and that the minor has committed the act; or

B. The Juvenile Court has issued a warrant.

§ 6.4.2. Duties of Tribal Peace Officers Taking Minors Into Custody. A tribal peace officer who takes a minor into custody shall proceed as follows:

A. The arresting officer shall inform the minor of his rights prior to any questioning in custody.

B. The arresting officer shall release the minor to the minor's parent, guardian, custodian and issue verbal counsel or warning as may be appropriate, unless shelter care or detention is necessary.

C. If the minor is not released, the arresting officer shall make immediate and recurring efforts to notify the minor's parent, guardian, or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until the need for shelter care or detention is determined.

D. If the minor is not released, the arresting officer shall immediately take the minor to a judge of the Juvenile Court or Police Chief.

§ 6.4.3. Determination of Need for Preadjudication Detention or Shelter Care. The Police Chief shall not place a minor in preadjudication detention unless a petition is filed in accordance with this Code or the Juvenile Court orders that a minor be taken into custody. If the minor's parent, guardian or custodian has not been contacted, the Juvenile Court or the Police Chief shall make immediate and recurring efforts to inform them that the minor has been taken into custody, and the minor shall be released to the parent, guardian or custodian unless detention or shelter care is immediately necessary. If the minor is not released to his parent, guardian or custodian, the Juvenile Court or the Police Chief shall place the minor in detention or shelter care pending the custody hearing.

§ 6.4.4. Criteria for Preadjudication Detention in Secure Juvenile Detention Facility for Minors 16 Years or Older.

A. **Required Detention.** A minor shall be detained in a secure juvenile detention facility if one or more of the following conditions are met:

1. The minor is a fugitive from another jurisdiction wanted for an offense that would be a felony if committed by an adult in that jurisdiction; or

2. The minor is charged with murder, sexual assault, or a violent crime with a deadly weapon or that has resulted in serious bodily injury; or

3. The minor is uncontrollable and has committed a serious physical assault on the arresting officer or on other security personnel during arrest or detention; or

4. The minor is charged with committing one of the following acts that would be an offense if committed by an adult: assault or aggravated assault (§ 13-1203, § 13-1204); drive-by shooting (§ 13-1209); arson of an occupied structure (§ 13-1704); or robbery (§ 13-1902).

B. Discretionary Detention. A minor may be detained in a secure juvenile detention facility only if the minor is charged with committing one of the following acts that would be an offense if committed by an adult: criminal trespass (§ 13-1504); burglary (§ 13-1508); theft (§ 13-1802); resisting arrest (§ 13-2508); or misconduct involving weapons (§ 13-3102); and one or more of the following conditions are met:

1. The minor is already detained or on conditioned release in connection with another juvenile offender proceeding; or

2. The minor has a demonstrable record of willful failures to appear at juvenile court proceedings; or

3. The minor has made an escape attempt and there is reasonable cause to believe the minor will run away or otherwise make himself unavailable for further proceedings; or

4. There is reasonable cause to believe the minor will commit a serious act causing injury or damage to persons or property.

C. Under no circumstances shall a minor in preadjudication custody pursuant to this Code be detained preadjudication in an adult jail or lockup.

§ 6.4.5. Criteria for Preadjudication Detention in A Shelter Care Facility for Minors 16 Years or Older.

A. A minor sixteen (16) years of age or older may be detained in a shelter care facility if one of the following conditions exists:

1. A condition described in the preceding section is found to exist; or

2. The minor is alleged to have committed an act other than one listed in section 6.4.4.A.4 above that would be an offense if committed by an adult; or

3. The minor is unwilling to return home or to the home of an extended family member; or

4. The minor's parent, guardian, or an extended family member is unavailable, unwilling or unable to permit the minor to return to his home; or

5. There is an evident and immediate physical danger to the minor in returning home, and all extended family members are unavailable, unwilling, or unable to accept responsibility for temporary care and custody of the minor.

B. A minor may be detained in the secure section of an approved shelter care facility if:

1. A condition described in section 6.4.4.B is found to exist; or

2. The minor requests in writing that he be given protection by being confined in the secure confinement area, and there is a present and immediate threat of serious physical injury to the minor.

§ 6.4.6. Criteria for Preadjudication Detention in Adult Jail Facilities for Minors 16 Years or Older. A minor sixteen (16) years of age or older may be detained in a jail or facility used for the detention of adults only if:

A. A facility under the previous section is not available or would not assure adequate supervision of the minor; and

B. Detention is in a cell separate but not removed from sight and sound of adults whenever possible; and

C. Adequate supervision is provided twenty-four (24) hours a day.

§ 6.4.7. Approved Facilities for Preadjudicatory Detention of Minors under 16 Years. A minor under sixteen (16) alleged to be a juvenile offender may be detained, preadjudication in the following places and in the following order of priority:

A. The home of an extended family member or a private family home on the Reservation; or

B. An approved shelter care facility if one of the criteria established by section 6.4.5 is met; or

C. An approved detention facility if one of the criteria established by section 6.4.4.A is met.

§ 6.4.8. Preadjudication Custody; Setting Hearing; Notice. If a minor is placed in detention or shelter care pursuant to the above sections, the Juvenile Court shall conduct a preadjudication custody hearing within forty-eight (48) hours for the purpose of determining whether continued detention or shelter care is necessary pending further proceedings. If the minor's parent, guardian or custodian has still not been contacted or is not present at the custody hearing, the Juvenile Court shall determine what efforts have been made to notify and obtain their presence. If it appears that further efforts are likely to produce the parent, guardian or custodian, the Juvenile Court shall recess for not more than twenty-four (24) hours and direct the Police Chief to make continued efforts to obtain the presence of a parent, guardian or custodian. Notice of the custody hearing shall be given to the minor and his parent, guardian or custodian as soon as the time for the hearing has been established.

§ 6.4.9. Preadjudication Custody; Prehearing Release. The minor shall be released to his parent, guardian or custodian pending his appearance at the preadjudication custody hearing unless:

A. One of the criteria for detention or shelter care under sections 6.4.4, 6.4.5 or 6.4.7 is found to exist; and

B. The Juvenile Court finds that there is probable cause to believe the minor has committed the act alleged.

Before ordering continued custody or release, the Juvenile Court shall take into consideration the recommendations of the Police Chief regarding alternative preadjudication custody.

The Juvenile Court may release a minor to an extended family member or other responsible adult tribal member if the parent, guardian or custodian of the minor consents to the release. If the minor is ten (10) years of age or older, the minor and his parent, guardian or custodian must both consent to such release.

When continued secure detention is necessary, the Juvenile Court may order that the minor be confined in the nearest state-approved juvenile detention facility.

Chapter 6.5
Transfer of Jurisdiction to Trial Division

§ 6.5.1. Pretransfer Hearing. The Juvenile Court shall conduct a hearing to determine whether probable cause exists to believe the minor committed the offense alleged and whether jurisdiction of the minor should be transferred to Trial Division. The transfer hearing shall be held not more than ten (10) days after the juvenile offender petition is filed. Written notice of the transfer hearing shall be given to the minor and

the minor's parent, guardian or custodian at least seventy-two (72) hours prior to the hearing.

§ 6.5.2. Standard. The Juvenile Court may transfer jurisdiction of the minor to the Trial Division if the Juvenile Court finds by clear and convincing evidence that each of the following circumstances exist:

A. There is probable cause to believe that the minor has committed the offense(s) alleged; and

B. There are no reasonable prospects for rehabilitating the minor through resources available to the Juvenile Court; and

C. The offense(s) allegedly committed by the minor evidences a pattern of conduct that constitutes a substantial danger to the public.

§ 6.5.3. Factors Considered. The Juvenile Court shall consider the following factors determining whether to transfer jurisdiction of the minor to the Trial Division.

A. The nature and seriousness of the offense with which the minor is charged.

B. The nature and condition of the minor, as evidenced by his age, mental and physical condition, past record of offenses, and response to past Juvenile Court efforts at rehabilitation.

§ 6.5.4. Orders. When ordering a transfer or jurisdiction to the Trial Division, the Juvenile Court shall issue a written transfer order stating clear, concise reasons for its transfer. The transfer order constitutes a final order for purposes of appeal.

Chapter 6.6
Juvenile Offender Adjudication

§ 6.6.1. Adjudicatory Hearing; Purpose. The Juvenile Court shall conduct an adjudicatory hearing for the sole purpose of determining whether the minor committed the offense charged. The hearing shall be private and closed.

§ 6.6.2. Adjudicatory Hearing; Setting of Hearing. Upon receipt of a juvenile offender petition, the Juvenile Court shall set a date for the hearing not more than thirty (30) days after the petition is filed with the Juvenile Court. If the adjudicatory hearing is not held within thirty (30) days after the filing of the petition, the petition shall be dismissed and cannot be filed again, unless:

A. The hearing is continued upon motion of the minor; or

B. The hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses, and the Juvenile Court finds the

presenting officer has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

§ 6.6.3. Summons. At least five (5) days prior to the hearing, the Juvenile Court shall issue summons to:

A. The minor; and

B. The minor's parent, guardian or custodian; and

C. Any person the Police Chief believes necessary for the proper adjudication of the matter; and

D. Any person the minor believes necessary for the proper adjudication of the matter.

The summons shall contain the name of the Juvenile Court, the title of the proceedings, and the date, time and place of the adjudicatory hearing. A copy of the juvenile offender petition shall be attached to the summons. The summons shall be delivered personally by a tribal peace officer or appointee of the Juvenile Court. If the summons cannot be delivered personally, the Juvenile Court may deliver the summons by U.S. certified mail, return receipt requested. If a person who has been issued a summons fails to appear at the hearing, that person may be held in contempt of court.

§ 6.6.4. Adjudicatory Hearing; Admission to Allegations. If the minor admits the allegations of the petition, the Juvenile Court shall proceed to the disposition stage only if the Juvenile Court finds:

A. The minor fully understands his rights under federal and tribal law and fully understands the potential consequences of his admission; and

B. The minor voluntarily, intelligently and knowingly admits to all facts necessary to constitute a basis for Juvenile Court action; and

C. The minor has not, in his purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

§ 6.6.5. Adjudicatory Hearing; Proof. The Juvenile Court shall hear testimony concerning the circumstances that gave rise to the petition. If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Juvenile Court shall find the minor to be a juvenile offender and proceed to the disposition hearing. A finding that a minor is a juvenile offender constitutes a final order for purposes of appeal.

Chapter 6.7
Disposition

§ 6.7.1. Disposition Hearing; Purpose. The purpose of the disposition hearing is to assist the Juvenile Court in determining proper treatment for a juvenile offender and to invoke corrective measures to address the problems that led to commission of the offense. The fundamental purpose of the disposition hearing is to provide for the health, welfare and safety of the juvenile offender during and after a treatment period. To achieve this purpose, the Juvenile Court may order the writer of any report or study to appear and answer questions regarding that report.

§ 6.7.2. Disposition Hearing; Setting. Not more than twenty (20) days after the adjudicatory hearing, the Juvenile Court shall conduct a disposition hearing to hear evidence on the question of proper disposition. The hearing shall be private and closed.

§ 6.7.3. Disposition Hearing; Notice. The Juvenile Court shall provide notice of the disposition hearing to the juvenile offender, his parent, guardian or custodian and their spokesperson, if any, at least forty-eight (48) hours before the hearing.

§ 6.7.4. Predisposition Report; Contents. The Police Chief shall present the predisposition report to the Juvenile Court, juvenile offender, his parent, guardian or custodian and their spokesperson, if any, at least forty-eight (48) hours before the hearing. The disposition report shall be written and describe all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of and assistance to the juvenile offender calculated to resolve the problems presented in the complaint. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the juvenile offender under the proposed plan. Preference shall be given to the disposition alternatives listed in this Title, and the report shall select a disposition that is the least restrictive of the juvenile offender's freedom and that is consistent with the interests of the Tribe. If the report recommends that the juvenile offender not continue to be placed with his parent, guardian or custodian, the report shall contain specific reasons for that recommendation.

§ 6.7.5. Other Reports of Social Service Agencies. Any social service agency that has prepared a report concerning the juvenile offender relating to the charged offense shall file the report with the Tribal Court Clerk and serve copies to the juvenile offender and his spokesperson at least forty-eight (48) hours before the disposition hearing.

§ 6.7.6. Reports; Opposition. At the disposition hearing, the Juvenile Court shall allow the juvenile offender and/or his parents to controvert the factual contents and conclusions of the reports. The Juvenile Court shall also consider any alternative predisposition report submitted on behalf of the juvenile offender, if any.

§ 6.7.7. Continuance. The Juvenile Court may continue the disposition hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence. If the hearing is continued, the Juvenile Court shall make an appropriate order for temporary custody of the minor and any other

such order or condition as the judge may find for the protection of the minor during the continuance.

§ 6.7.8. Disposition Decree. A disposition decree vesting legal custody and guardianship of a juvenile offender shall be for an indeterminate period, not to exceed two (2) years, unless renewal by the Juvenile Court is in the best interests of the juvenile offender. Such decree shall be reviewed by the Juvenile Court every six (6) months after it is entered, provided that no other action is required.

Upon entering a disposition decree, the Juvenile Court shall include one or more of the following provisions which it finds appropriate:

A. The Juvenile Court may place the juvenile offender in the legal custody of a parent or guardian and under such conditions as the Juvenile Court may impose, which may include probation or protective supervision.

B. The Juvenile Court may place the juvenile offender in the legal custody of a relative or other suitable person under such conditions as the Juvenile Court may impose, which may include probation or protective supervision.

C. The Juvenile Court may place the juvenile offender in legal custody of a social service agency for placement.

D. The Juvenile Court may order that the juvenile offender be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care and may place the juvenile offender in a hospital or other suitable facility for such purposes.

E. The Juvenile Court may commit the juvenile offender to an appropriate institution or group care facility.

§ 6.7.9. Disposition Order; Modification. A disposition order of the Juvenile Court may be modified upon a showing of change of circumstances. The Juvenile Court may modify a disposition order at any time upon the motion of the following:

A. The juvenile offender; or

B. The juvenile offender's parent, guardian or custodian; or

C. The Police Chief.

If the modification involves a change of custody, the Juvenile Court shall conduct a hearing to review its disposition order.

§ 6.7.10. Modification Hearing; Notice. Notice in writing of a modification hearing shall be given to the juvenile offender, the juvenile offender's parent, guardian or custodian and their spokesperson at least forty-eight (48) hours before the hearing.

§ 6.7.11. Standards for Modification. The Juvenile Court shall review the performance of the juvenile offender, the juvenile offender's parent, guardian or custodian and the Police Chief and other persons providing assistance to the juvenile offender and his family. In determining modification of disposition, the procedures for a disposition hearing shall apply. If the request for review of disposition is based upon an alleged violation of a court order, the Juvenile Court shall not modify its disposition order unless it finds clear and convincing evidence of the violation.

Chapter 6.8
Juvenile Offender Probation

§ 6.8.1. Terms and Conditions.

A. The terms and conditions of juvenile offender probation shall be specified by rules or orders of the Juvenile Court. Each juvenile offender placed on probation shall be given a written statement of the terms and conditions of his probation and shall have such terms and conditions fully explained.

B. The Juvenile Court shall review the terms and conditions of juvenile probation and the progress of each juvenile offender placed on juvenile probation at least once every six (6) months.

C. The Juvenile Court may release the juvenile offender from juvenile probation or modify the terms and conditions of probation at any time.

§ 6.8.2. Revocation of Probation. The Police Chief may commence a proceeding to revoke juvenile probation by filing of a petition to revoke juvenile probation. Such petition shall be prepared and filed by the Police Chief whenever he has reasonable cause to believe that the juvenile offender has violated a term or condition of his probation.

§ 6.8.3. Hearing on Revocation.

A. The Juvenile Court shall set a hearing on the petition to revoke and shall give at least forty-eight (48) hours' notice to the juvenile offender and the parents, guardian or other legal custodian, and any other parties to the proceeding.

B. The juvenile offender, his parents, guardian, or other legal custodian shall be given a copy of the petition to revoke and shall have the right to be represented by a spokesperson at the hearing, at their own cost, and shall be entitled to the issuance of compulsory process for the attendance of witnesses.

C. The Juvenile Court shall conduct hearing on the petition to revoke as soon as possible.

D. The Juvenile Court shall not revoke juvenile probation except upon a showing by clear and convincing evidence by the Police Chief that the juvenile offender

violated a term or condition of his probation. In all other respects, a proceeding to revoke juvenile probation shall be governed by the procedures, rights and duties applicable to an adjudicatory hearing under this Title.

E. If the Juvenile Court finds that the juvenile offender violated the terms and conditions of juvenile probation, it may modify the terms and conditions of probation, revoke probation, or take such other action permitted by this Title that is in the best interest of the juvenile offender and the Tribe.

F. If the Juvenile Court finds that the juvenile offender did not violate the terms and conditions of his juvenile probation as alleged, it shall dismiss the proceedings and continue the juvenile offender on probation under the terms and conditions previously established.

This Title approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Title is newly added to the laws of the Quechan Indian Tribe. The definition of "minor" in subsection 6.2.8(c) is different from the definitions contained in subsections 6.2.8(a) and 6.2.8(b) in anticipation of the Juvenile Court accepting state court transfers of jurisdiction under the Indian Child Welfare Act.

QUECHAN LAW AND ORDER CODE

TITLE 7
APPELLATE PROCEDURE

Chapter 7.1
General

§ 7.1.1. General Provisions. These provisions shall be known as the Quechan Indian Tribe's Code of Appellate Procedure. These provisions shall govern the procedure in appeals to the Quechan Supreme Court from the Trial Division and other relief that the Supreme Court is competent to give. These rules shall not be construed to extend or limit the jurisdiction of the Quechan Supreme Court as may be established by other tribal laws, and all provisions of these rules shall be subject to the Constitution and By-Laws of the Quechan Indian Tribe.

§ 7.1.2. Discretionary Authority. Where no procedures are provided in these rules or other statutes of the Tribe, the Quechan Supreme Court may proceed to exercise its functions in any lawful manner.

Chapter 7.2
Quechan Supreme Court

§ 7.2.1. Quechan Supreme Court. The Quechan Supreme Court shall sit at such times and places as is proper and necessary to hear appeals from final orders, decrees, and judgments of the Tribal Division.

§ 7.2.2. Quechan Supreme Court Judge. When there is need for the Quechan Supreme Court to sit, the Chief Judge shall appoint a Supreme Court judge from the pro tem judge list maintained pursuant to Title 4 of this Code. Such judge shall constitute the Supreme Court. No person shall be qualified to sit on the Supreme Court in any case wherein such person: (a) sat as the Trial Division judge, (b) has any direct interest in the case, or, (c) is a relative by marriage or blood, in the first or second degree, to a party to the case before the Trial Division.

§ 7.2.3. Quechan Supreme Court Clerk. The Tribal Court Clerk shall also serve as the Quechan Supreme Court Clerk, unless and until the Tribal Council determines to fill the position separately.

Chapter 7.3
Taking the Appeal: Establishing Jurisdiction,
Notice of Appeal and Filing Fee; Stay of Execution

§ 7.3.1. Appeal; Notice of Appeal; Filing Fee.

A. A party to a final judgment entered by the Trial Division may appeal that judgment by filing a notice of appeal with the Tribal Court Clerk within the time allowed by section 7.3.2, 7.3.3 or by the statute applicable in the specific case.

B. The notice of appeal shall specify the parties to the appeal; shall designate and attach the judgment appealed from; the Trial Division docket number; and a short statement of the reason or grounds for the appeal. The Quechan Supreme Court shall not dismiss an appeal for informality of form or title of the notice of appeal.

C. The appellant shall pay to the Tribal Court Clerk, for deposit in the Court Fund, an appellate filing fee in the amount of $30.00 or such other amount as determined by the Chief Judge; provided, however, no filing fee shall be required for an appeal by the Tribe, its officers, or agents when acting in their official capacity.

§ 7.3.2. Appeal; Time. The appellant shall file a notice of appeal and proof of service on all parties to the final judgment with the Tribal Court Clerk no later than twenty (20) days from the date a final order, decree, or judgment is entered.

§ 7.3.3. Appeal; Notice of Appeal and Proof of Service as Jurisdictional. The Quechan Supreme Court shall have no jurisdiction to hear any appeal in which the notice of appeal and proof of service upon all parties to the judgment appealed from is filed with the Tribal Court Clerk more than twenty (20) days from the day the final order, decree, or judgment is entered by the Trial Division.

§ 7.3.4. The Record on Appeal. The original papers and exhibits filed in the Trial Division, the transcript or tape recording of the proceedings, if any, and a certified copy of the docket entries prepared by the Tribal Court Clerk and the final order, decree, or judgment is the record on appeal.

§ 7.3.5. Validity of Final Order, Decree or Judgement Pending Appellate Determination; Stay of Execution. The final order, decree or judgment of the Trial Division that is the subject of an appeal shall be valid and binding, notwithstanding the filing of a notice of appeal. However, where an appellant has timely filed and served his notice of appeal, the appellant may request that the Quechan Supreme Court grant a stay of execution of the final order, decree, or judgment that is the subject of the appeal. The Supreme Court, in its sole discretion, may grant a stay of execution. If the Supreme Court grants such a stay, the final order, decree or judgment shall not be carried out unless and until affirmed by the Supreme Court.

Chapter 7.4
Submitting the Appeal: Briefs

§ 7.4.1. Appellant's Brief; Contents; Form; Page Limitation. Appellants' briefs shall contain the following sections in the order indicated:

A. A statement of the issue(s) the appellant believes were wrongly determined by the Trial Division.

B. A statement of the standard of review. See section 7.5.1, infra.

C. A statement of the case. The appellant shall first state briefly the factual background of the case and a background of the proceedings in the Trial Division.

D. An argument. The appellant shall state its legal arguments why the Trial Division wrongly decided the issue presented. The argument should be supported with accurate citations to legal authority and to the record, where applicable.

E. A short conclusion stating the precise relief sought.

Briefs shall be neat and readable. A judge of the Quechan Supreme Court may, in his sole discretion, reject for filing any brief that is not easily readable for whatever reason, including too small a font. Appellants' briefs shall be strictly limited to twenty-five (25) pages. The Tribal Court Clerk shall reject for filing any brief that exceeds the 25-page limitation, unless special leave of the Quechan Supreme Court allows filing of the brief. If a brief is rejected for filing, the filing party may have additional time to file a corrected brief only in the discretion of a judge of the Quechan Supreme Court.

§ 7.4.2. Appellee's Brief; Form; Page Limitation. Appellees' briefs shall conform to the requirements of section 7.4.1. However, an appellee may omit statements of the issues presented and case if they agree with the appellant's statement. Appellees' briefs shall be strictly limited to twenty-five (25) pages. The Tribal Court Clerk shall reject for filing any brief that exceeds the 25-page limitation, unless special leave of the Supreme Court allows filing of the brief.

§ 7.4.3. Appellant's Reply; Form; Page Limitation. Appellant may file a brief replying to the arguments made in the appellee's brief. Reply briefs shall conform to the requirements of section 7.4.1. Reply briefs shall be strictly limited to ten (10) pages. The Tribal Court Clerk shall reject for filing any reply brief that exceeds the 10-page limitation, unless special leave of the Supreme Court allows filing of the brief.

§ 7.4.4. Brief Filing Schedule; Service. Unless the Quechan Supreme Court imposes a specific scheduling order to the contrary, the appellant's brief shall be filed and served within thirty (30) days of the date of filing of appellant's notice of appeal. The appellee's brief shall be filed and served within sixty (60) days of the date of filing of appellant's notice of appeal. The appellee shall file and serve his reply brief within seventy (70) days of the date of filing of appellant's notice of appeal. The Supreme

Court may, either upon request of the parties or on its own initiative, enter a scheduling order that otherwise establishes an efficient and fair briefing schedule.

Chapter 7.5
Deciding the Appeal

§ 7.5.1. Decision on Appeal; Standard of Review.

A. Issues of Law. The Quechan Supreme Court may reverse the Trial Division's decision on an issue of law only if the appellant demonstrates that the Trial Division's decision was based on a harmful error.

B. Issues of Fact. The Quechan Supreme Court may reverse the Trial Division's decision on an issue of fact only if the appellant demonstrates that the Trial Division's decision was clearly erroneous.

§ 7.5.2. Decision on Appeal; Basis; No Oral Argument. The Quechan Supreme Court shall decide all cases upon the briefs and record without oral argument unless (i) a party requests oral argument and shows to the Supreme Court that oral argument will aid the Court's decision or (ii) the Supreme Court decides on its own to hear oral argument.

§ 7.5.3. Decision on Appeal; Scope of Relief Available. The Quechan Supreme Court shall issue a written decision, and all judgments on appeal shall be final. The Supreme Court shall have the power to affirm or reverse, in whole or in part, the decision of the Trial Division or to order that a new trial be held.

Chapter 7.6
Judgment and Award of Costs

§ 7.6.1. Entry of Appellate Judgment; Copy to Trial Division. The Tribal Court Clerk shall prepare, sign and enter the judgment following receipt of the opinion of the Quechan Supreme Court. If the opinion directs a new trial or other action of the Trial Division, the Tribal Court Clerk shall provide a copy to the Trial Division file. The Tribal Court Clerk shall, immediately upon receipt of the opinion of the Supreme Court, serve by first-class mail all parties to the appeal with copies of the signed judgment and opinion.

§ 7.6.2. Interest on Judgments. Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the Trial Division. If a judgment is modified or reversed with a direction that a judgment for money be entered in the Trial Division the order shall contain instructions with respect to allowance of interest.

§ 7.6.3. To Whom Costs of Appeal Allowed.

A. If an appeal is dismissed, the judgment on appeal shall tax costs against the appellant unless justice requires otherwise;

B. If a Trial Division judgment is affirmed, the judgment on appeal shall tax costs against the appellant unless justice requires otherwise;

C. If a Trial Division judgment is reversed, costs shall be taxed against the appellee unless justice requires otherwise;

D. If a Trial Division judgment is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the Quechan Supreme Court.

§ 7.6.4. Costs For or Against the Tribe. The Tribe, its officers, or agents when acting in their official capacity may be awarded costs on appeal pursuant to section 7.6.3. However, the Quechan Supreme Court shall award no costs pursuant to section 7.6.3 against the Tribe, its officers, or agents when acting in their official capacity.

This Title approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Title is newly added to the laws of the Quechan Indian Tribe.

QUECHAN LAW AND ORDER CODE

TITLE 8
TRAFFIC
[RESERVED]

QUECHAN LAW AND ORDER CODE

TITLE 9
LAW ENFORCEMENT

Chapter 9.1
Authority Over Law Enforcement Function

§ 9.1.1. Ultimate Responsibility of Tribal Council. The Tribal Council shall have ultimate responsibility for and command over tribal law enforcement. The Tribal Council may appoint any of its members to be responsible for tribal law enforcement matters, and such members shall keep themselves informed regarding tribal law enforcement matters and report thereon to the Council. The Council shall appoint a Police Chief upon such terms and conditions of employment as the Council shall direct. The Police Chief with the concurrence of the Tribal Council may establish such ranks and appoint officers thereto as are deemed necessary.

Chapter 9.2
Police Chief

§ 9.2.1. Duties. The duties of the Police Chief shall be as follows:

A. To be responsible for and supervise all tribal law enforcement functions on the Reservation;

B. To be in command of all tribal police officers and employees;

C. To instruct, train and advise tribal police officers in the functions, duties and responsibilities of tribal police officers for the efficient maintenance of law and order on the Reservation;

D. To be responsible for and supervise all tribal probation officers;

E. To be responsible for the initiation and follow-up of juvenile offender proceedings;

F. To report to the Council on law enforcement activities;

G. To provide policemen to the Tribal Court to perform bailiff service, transportation of prisoners, and service of court papers;

H. To adopt reasonable regulations to serve as a standard of conduct for tribal police officers and to insure the efficient maintenance of law and order.

I. To ensure cooperation with other law enforcement agencies;

J. To perform other law enforcement-related activities as the Council shall direct;

K. To designate an acting Police Chief to serve as Police Chief in his absence.

Chapter 9.3
Tribal Police Officers

§ 9.3.1. Hiring. The Police Chief may hire tribal police officers upon such terms and conditions of employment as the Council may direct.

§ 9.3.2. Qualifications. The qualifications of tribal police officers shall be as follows:

A. The officer must be in sound physical and mental condition and of sufficient size and strength to perform the required duties;

B. The officer must be willing and able to attend police officer training courses as a condition of his hiring and continued employment;

C. The officer must be of high moral character and have never been convicted of a felony or convicted of any other offense within one year prior to appointment;

Preference in hiring will be given to Quechan tribal members in situations where qualifications are otherwise similar.

§ 9.3.3. Duties. The duties of a tribal police officer shall be:

A. To obey promptly all orders of the Police Chief, ranking police officers or a judge of the Tribal Court when the officer is assigned to Court duty;

B. To report and investigate all violations of any law or regulation coming to his attention;

C. To arrest all persons for violations of law when there exists probable cause for doing so;

D. To lend assistance to other officers;

E. To prevent, whenever possible, violations of the law;

F. To keep informed as to tribal law and all other laws and regulations applicable to the Reservation and to attend such training sessions as the Council or Police Chief may direct;

G. To become familiar with and practice at all times principles of good police procedure;

H. To use no unnecessary force or violence in making an arrest, search or seizure;

I. To abstain from the use of narcotics or excessive use of alcohol and to refrain from engaging in any other act that, regardless of its legality, would reflect discredit on the Tribe or the Tribal police;

J. To refrain from the use of profane, vulgar, insolent or offensive language;

K. To report to superior officers all deaths or accidents of a serious nature or other events or impending events of importance;

L. To keep all equipment in good repair and order and to immediately report the loss of any or all of such property;

M. To obey all regulations that the Police Chief may adopt.

§ 9.3.4. Dismissal of Police Officers. The Police Chief may suspend or dismiss any officer for noncompliance with the provisions of this Code or other violations of regulations or neglect of duty.

§ 9.3.5. Deputizing. Another jurisdiction may authorize tribal police to aid in the effective law enforcement on the Reservation. Law enforcement officers and other law enforcement or security-related personnel from other jurisdictions or other departments or enterprises of the Tribe may be deputized to aid in the enforcement of tribal law.

§ 9.3.6. Police Training. The Police Chief shall establish minimum standards of training which all police officers will be encouraged to meet. Further, the Police Chief shall explore, schedule and arrange periodic training and retraining programs for Tribal police officers. Such programs shall stress not only basic police procedures and techniques but shall also deal with crime prevention, community and public relations, and other appropriate topics.

Chapter 9.4
Tribal Probation Officers

§ 9.4.1. Police Chief to Serve as Probation Officer; Powers and Duties. The Police Chief may serve as the adult and juvenile probation officer. The probation officer shall make preliminary inquiries and such other investigations as the Tribal Court may direct and shall keep written records of such investigations. The probation officer shall make reports to the Tribal Court as required by this Code or as directed by the Tribal Court. The probation officer shall keep informed concerning the conduct and conditions of each juvenile and adult offender on probation or under protective supervision and shall report thereon as required by the Tribal Court. The probation officer may use all suitable methods to aid minors on probation or under protective supervision to bring about improvements in their conduct or condition and shall perform such other duties in connection with the care, custody or transportation of offenders as the Tribal Court may require.

§ 9.4.2. Probation Officers; Appointment by Police Chief. The Police Chief may appoint probation officers and delegate to them duties under section 9.4.1. The Police Chief may appoint probation officers serving in the Trial Division to also serve in the Juvenile Court. Probation officers shall have the powers of peace officers for purposes of this Juvenile Code but shall, whenever possible, refrain from exercising such powers except in urgent situations in which a regular peace officer is not immediately available. Any person appointed to be a probation officer may be appointed to serve with or without pay. Probation officers shall be supervised by the Police Chief.

This Title approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Title is newly added to the laws of the Quechan Indian Tribe.

QUECHAN LAW AND ORDER CODE

TITLE 10
EXCLUSION

Chapter 10.1
Purpose

§ 10.1.1. Purpose. The Tribe has the inherent power to exclude nonmembers from the Reservation and to determine conditions upon which they may remain.

This Title, which incorporates Quechan Tribal Council Resolution R-23-71, enacting Ordinance 1-71, establishes a procedure, political and civil in nature, by which the Tribal Council is to accomplish exclusion, including expulsion, of nonmembers from the Reservation.

Chapter 10.2
Grounds

§ 10.2.1. Who May Be Excluded. Any nonmember of the Tribe may be excluded from the Reservation.

§ 10.2.2. Grounds for Exclusion. Upon petition to the Tribal Council, a nonmember of the Tribe may be excluded for commission of one or more of the following acts within the Reservation:

A. Any crime, as defined by tribal, state or federal law, or any act which, if committed by a Quechan member, would be an offense under this Code or any other ordinance or resolution of the Council.

B. Any violation of this Code or any ordinance or regulation of the Tribe.

C. Breach of the peace.

D. Public intoxication.

E. Unauthorized taking of any property from the Reservation.

F. Any act causing physical loss or damage of any nature to tribal property or property of any member.

G. Failure or refusal to pay any taxes, rents or other charges due the Tribe after reasonable notice and opportunity to pay.

H. Entering an area of the Reservation in violation of any order of the Council designating such area as closed for any reason.

I. Hunting or fishing without lawful authority or permission or in violation of applicable regulations.

J. Unauthorized cutting, harvesting or destroying vegetation.

Chapter 10.3
Procedure

§ 10.3.1. Notice and Hearing. The Tribal Council Secretary shall cause notice to be served personally or by certified mail upon any nonmember whenever the Tribal Council determines that such notice should be served. The notice shall state the reason for the proposed exclusion and shall state a time and place at which the non- member shall appear to show cause to the Tribal Council why it should not exclude him from the Reservation.

The hearing shall be not less than five (5) days after the time of service, provided, that if the Tribal Council has reasonable cause to believe that an emergency exists and the notice so states, the hearing may be held twenty-four (24) hours after the time of service.

§ 10.3.2. Hearing on Exclusion Before Tribal Court. At the time stated in the notice, the Tribal Council shall hold a hearing to decide whether the nonmember shall be excluded from the Reservation. The Tribal Council will provide the nonmember with an opportunity to present his defense, to be represented by a spokesperson, and to confront the evidence against him. After the hearing, or after the time set for the hearing if the nonmember does not appear, the Tribal Council may order him excluded from the Reservation or may permit him to remain upon the Reservation on such conditions as the Tribal Council sees fit to impose. The Tribal Council's order of exclusion shall remain in force until revoked by the Tribal Council, unless the order specifically provides otherwise. Tribal Council orders of exclusion are not appealable to the Tribal Court.

§ 10.3.3. Proceedings for Enforcement of Orders of Exclusion. If any nonmember ordered excluded from the Reservation does not promptly obey the order, the Tribal Council may refer the matter to appropriate law enforcement authorities for action. If, after a reasonable time after such referral, no effective action has been taken to enforce the exclusion order, the Tribal Council may refer the matter to counsel for the Tribe who shall take such legal action as directed by the Council.

§ 10.3.4. Physical Removal of Trespassers; Emergency. In cases involving immediate danger to the life, health, morals or property of the Tribe or any of its members or where any delay would result in irreparable damage, the Tribal Council may order any tribal peace officer to remove a nonmember or any of his property from the Reservation, either before or after the nonmember has been ordered excluded. If service of the notice has not already been made, the Tribal Council shall order the officer to serve the notice upon the nonmember at the time of removal or as soon after removal as possible. The officer executing the order shall use only so much force as necessary to effect the removal.

§ 10.3.5. Physical Removal of Trespassers; No Emergency. In cases where the nonmember has not already been ordered excluded, the Tribal Council shall notify the nonmember of the time and manner in which he may re-enter the Reservation in the company of a tribal peace officer for the purpose of attending the hearing on exclusion. The nonmember shall be accompanied by a tribal peace officer at all times during his presence on the Reservation.

This Title approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Title is newly added to the laws of the Quechan Indian Tribe.

QUECHAN LAW AND ORDER CODE

TITLE 11
[RESERVED]

QUECHAN LAW AND ORDER CODE

TITLE 12
[RESERVED]

TITLE 13
CRIMINAL OFFENSES

Chapter 1
General Provisions

§ 13-101. Purposes. It is declared that the public policy of the Quechan Indian Tribe and the general purposes of the provisions of this Title are:

1. To proscribe conduct that unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests;

2. To give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;

3. To define the act or omission and the accompanying mental state which constitute each offense and limit the condemnation of conduct as criminal when it does not fall within the purposes set forth;

4. To differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties for each;

5. To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized;

6. To impose just and deserved punishment on those whose conduct threatens the public peace; and

7. To promote truth and accountability in sentencing.

§ 13-103. Abolition of Common Law Offenses. No conduct or omission constitutes an offense unless it is an offense under this Title or under another tribal statute or ordinance.

§ 13-105. Definitions.

1. "Act" means a bodily movement.

2. "Benefit" means anything of value or advantage, present or prospective.

5. "Conduct" means an act or omission and its accompanying culpable mental state.

6. "Crime" means any offense under this Title or under the laws of any other jurisdiction, including felonies and misdemeanors.

7. "Criminal street gang" means an ongoing formal or informal association of persons whose members or associates individually or collectively engage in the commission, attempted commission, facilitation or solicitation of any felony act and who has at least one individual who is a criminal street gang member.

8. "Criminal street gang member" means an individual to whom two of the following seven criteria that indicate criminal street gang membership apply:

(a) Self-proclamation.

(b) Witness testimony or official statement.

(c) Written or electronic correspondence.

(d) Paraphernalia or photographs.

(e) Tattoos.

(f) Clothing or colors.

(g) Any other indicia of street gang membership.

9. "Culpable mental state" means intentionally, knowingly, recklessly or with criminal negligence as those terms are thusly defined:

(a) "Intentionally" or "with the intent to" means, with respect to a result or to conduct described by a statute defining an offense, that a person's objective is to cause that result or to engage in that conduct.

(b) "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

(c) "Recklessly" means, with respect to a result or to a circumstance described by a statute defining an offense, that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross

deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.

(d) "Criminal negligence" means, with respect to a result or to a circumstance described by a statute defining an offense, that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

10. "Dangerous drug" means dangerous drug as defined by section 13-3401.

11. "Dangerous instrument" means anything that 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 physical injury.

12. "Deadly physical force" means force which is used with the purpose of causing death or serious physical injury or in the manner of its use or intended use is capable of creating a substantial risk of causing death or serious physical injury.

13. "Deadly weapon" means anything designed for lethal use, including a firearm.

14. "Economic loss" means any loss incurred by a person as a result of the commission of an offense. Economic loss includes lost interest, lost earnings and other losses which would not have been incurred but for the offense. Economic loss does not include losses incurred by the convicted person, damages for pain and suffering, punitive damages or consequential damages.

15. "Enterprise" includes any corporation, association, labor union or other legal entity.

16.1 "Felony" means an offense for which a sentence to a term of imprisonment of one (1) year or more is authorized by the applicable law of a jurisdiction other than that of the Tribe.

17. "Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of expanding gases, except that it does not include a firearm in permanently inoperable condition.

18. "Government" means the Tribe, any political subdivision of the Tribe or any department, agency, board, commission, institution or governmental instrumentality of or within the Tribe or political subdivision.

19. "Government function" means any activity that a public servant is legally authorized to undertake on behalf of the government.

20. "Intoxication" means any mental or physical incapacity resulting from the use of drugs, toxic vapors or intoxicating liquors.

21.1 "Misdemeanor" means an offense for which a sentence to a maximum term of six (6) months' imprisonment is authorized by the applicable law of a jurisdiction other than that of the Tribe.

22. "Narcotic drug" means narcotic drugs as defined by section 13-3401.

23.1 "Offense" means conduct for which a sentence to a term of imprisonment, a fine, and or restitution is provided by this Code and, if the act occurred in a jurisdiction other than that of the Tribe, it would be so punishable under the laws, regulations, or ordinances of that jurisdiction.

24. "Omission" means the failure to perform an act as to which a duty of performance is imposed by law.

25. "Peace officer" means any person vested by law with a duty to maintain public order and make arrests.

26. "Person" means a human being and, as the context requires, an enterprise, a public or private corporation, an unincorporated association, a partnership, a firm, a society, a government, a governmental authority or an individual or entity capable of holding a legal or beneficial interest in property.

28. "Physical force" means force used upon or directed toward the body of another person and includes confinement, but does not include deadly physical force.

29. "Physical injury" means the impairment of physical condition.

30. "Possess" means knowingly to have physical possession or otherwise to exercise dominion or control over property.

31. "Possession" means a voluntary act if the defendant knowingly exercised dominion or control over the property.

32. "Property" means anything of value, tangible or intangible.

33. "Public servant" means any officer or employee of any branch of government, whether elected, appointed or otherwise employed, including a peace officer, and any person participating as an advisor, consultant or otherwise in performing a governmental function. The terms does not include jurors or witnesses. Public servant includes those who have not yet been elected, appointed, employed or designated to become a public servant although not yet occupying that position.

34. "Serious physical injury" includes physical injury which creates a reasonable risk of death, or which causes serious and permanent disfigurement, serious impairment of health or loss of protracted impairment of the function of any bodily organ or limb.

35. "Unlawful" means contrary to law or, where the context so requires, not permitted by law.

36. "Vehicle" means a device in, upon or by which any person or property is or may be transported or drawn upon a highway, waterway or airway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

37. "Voluntary act" means a bodily movement performed consciously and as a result of effort and determination.

38. "Voluntary intoxication" means intoxication caused by the knowing use of drugs, toxic vapors or intoxicating liquors by a person, the tendency of which to cause intoxication the person knows or ought to know, unless the person introduces them pursuant to medical advice or under such duress as would afford a defense to an offense.

§ 13-105.1. The numbers of the sections herein are intended to correspond with the same section of Title 13 of the Arizona Revised Code in effect at the time of enactment of this Code Sections herein that do not correspond to Title 13, Arizona Revised Statutes, are indicated by a decimal point following the section number, as in this section.

§ 13-110. Conviction For Attempt Although Crime Perpetrated. A person may be convicted of an attempt to commit a crime, although it appears upon the trial that the crime intended or attempted was perpetrated by the person in pursuance of such an attempt, unless the Trial Division, in its discretion, discharges the jury and directs the person to be tried for the crime.

§ 13-111. Former Jeopardy or Acquittal as Bar to Same or Lesser Offenses. When the defendant is convicted or acquitted or has once been placed in jeopardy upon an indictment or information, the conviction, acquittal or jeopardy is a bar to another indictment or information for the offense charged in either, or for an attempt to commit the offense, or for any offense necessarily included therein, of which he might have been convicted under the indictment of information.

§ 13-114. Speedy Trial; Counsel; Witnesses and Confrontation. In a criminal action defendant is entitled:

1. To have a speedy public trial by an impartial jury.

2. To have counsel at defendant's expense.

3. To produce witnesses on his behalf and to be confronted with the witnesses against him in the presence of the court, except that the testimony or deposition of a witness may be received in evidence at the trial as by law prescribed.

Subsection 2 modifies the corresponding Arizona statute in that federal and tribal law require a defendant to obtain counsel at their own expense.

§ 13-115. Presumption of Innocence and Benefit of Doubt; Degrees of Guilt.

A. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in a case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to be acquitted.

§ 13-116. Double Punishment. An act or omission which is made punishable in different ways by different sections of the laws may be punished under both, but in no event may sentences by other than concurrent. An acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other, to the extent allowed by the Constitution of the Quechan Indian Tribe and the Indian Civil Rights Act, 25 U.S.C. section 1302.

§ 13-117. Defendant as Witness; No Comment on Failure to Testify.

A. A defendant in a criminal action or proceeding shall not be compelled to be a witness against himself, but may be a witness on his own behalf, he may be cross-examined to the same extent and subject to the same rules as any other witness.

B. The defendant's neglect or refusal to be a witness in his own behalf shall not in any manner prejudice him, or be used against him on the trial or proceedings.

§ 13-120. Disposition of Property Taken From Defendant; Receipts.

A. When money or other property is taken from a defendant arrested upon a charge of a crime or public offense, the officer taking it shall at the time make duplicated receipts therefor, specifying particularly the amount of money or the kind of property taken. The officer shall deliver one (1) receipt to the defendant and shall file the other with the Tribal Court Clerk.

§ 13-122. Action for Recovery of Public Monies. The Tribal Council or the prosecutor may maintain a civil action against any person convicted of an offense for the recovery of any public monies paid to the person in the course of the offense.

Chapter 2
General Principles of Criminal Liability

§ 13-201. Requirements For Criminal Liability. The minimum requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform a duty imposed by law which the person is physically capable of performing.

§ 13-204. Effect of Ignorance or Mistake Upon Criminal Liability.

A. Ignorance or a mistaken belief as to a matter of fact does not relieve a person of criminal liability unless:

1. It negates the culpable mental state required for commission of the offense; or

2. It supports a defense of justification as defined in chapter 4 in this Title.

B. Ignorance or mistake as to a matter of law does not relieve a person of criminal responsibility.

Chapter 3
Parties to Offenses; Accountability

§ 13-301. Definition. In this Title, unless the context otherwise requires, "accomplice" means a person, other than a peace officer acting in his official capacity within the scope of his authority and in the line of duty, who with the intent to promote or facilitate the commission of an offense:

1. Solicits or commands another person to commit the offense; or

2. Aids, counsels, agrees to aid or attempts to aid another person in planning or committing the offense; or

3. Provides means or opportunity to another person to commit the offense.

§ 13-302. Criminal Liability Based Upon Conduct. A person may be guilty of an offense committed by such person's own conduct or by the conduct of another for which such person is criminally accountable as provided in this Chapter, or both. In any prosecution, testimony of an accomplice need not be corroborated.

§ 13-303. Criminal Liability Based Upon Conduct of Another.

A. A person is criminally accountable for the conduct of another if:

1. The person is made accountable for such conduct by the statute defining the offense; or

2. Acting with the culpable mental state sufficient for the commission of the offense, such person causes another person, whether or nor such other person is capable of forming the culpable mental state, to engage in such conduct; or

3. The person is an accomplice of such another person in the commission of an offense.

B. If causing a particular result in an element of an offense, a person who acts with the kind of culpability with respect to the result that is sufficient for the commission of the offense is guilty of that offense if:

1. The person solicits or commands another person to engage in the conduct causing such result; or

2. The person aids, counsels, agrees to aid or attempts to aid another person in planning or engaging in the conduct causing such result.

§ 13-304. Nondefenses to Criminal Liability Based Upon Conduct of Another. In any prosecution for an offense in which the criminal liability of the accused is based upon the conduct of another under section 13-303 or pursuant to section 13-1003, it is no defense that:

1. The other person has not been prosecuted for or convicted of such offense, or has been acquitted of such offense, or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction for such offense; or

2. The accused belongs to a class of persons who by definition of the offense are legally incapable of committing the offense in an individual capacity.

Chapter 4
Justification

§ 13-401. Unavailability of Justification Defense; Justification as Defense.

A. Even though a person is justified under this Title in threatening or using physical force or deadly physical force against another, if in doing so such person recklessly injures or kills an innocent third person, the justification afforded by this Chapter is unavailable in a prosecution for the reckless injury or killing of the innocent third person.

B. Except as provided in subsection A of this section, justification as defined in this Chapter is a defense in any prosecution for an offense pursuant to this Title.

§ 13-402. Justification; Execution of Public Duty.

A. Unless inconsistent with the other sections of this Chapter defining justifiable use of physical force or deadly force or with some other superseding provision of law, conduct which would otherwise constitute an offense is justifiable when it is required or authorized by law.

B. The justification afforded by subsection A of this section also applies if:

1. A reasonable person would believe such conduct is required or authorized by the judgement 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; or

2. A reasonable person would believe such conduct is required or authorized to assist a peace officer in the performance of such officer's duties, notwithstanding that the officer exceeded the officer's legal authority.

§ 13-403. Justification; Use of Physical Force. The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

1. A parent or guardian and a teacher or other person entrusted with the care and supervision of a minor or incompetent person may use reasonable and appropriate physical force upon the minor or incompetent person when and to the extent reasonably necessary and appropriate to maintain discipline.

2. A superintendent or other entrusted official of a jail, prison or correctional institution may use physical force for the preservation of peace, to maintain order or discipline, or to prevent the commission of any crime.

3. A person responsible for the maintenance of order in a place where others are assembled or on a common motor carrier of passengers, or a person acting under his direction, may use physical force if and to the extent that a reasonable person would believe it necessary to maintain order, but such person may use deadly physical force only if reasonably necessary to prevent death or serious physical injury.

4. A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon himself may use physical force upon that person to the extent reasonably necessary to thwart the result.

5. A duly licensed physician or a registered nurse or a person acting under his direction, or any other person who renders emergency care at the scene of an emergency occurrence, may use reasonable physical force for the purpose of administering a recognized and lawful form of treatment which is reasonably adopted to promoting the physical or mental health of the patient if:

(a) The 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 parent, guardian or other person entrusted with his care and supervision except as otherwise provided by law; or

(b) The treatment is administered in an emergency when the person administering such treatment reasonably 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.

6. A person may otherwise use physical force upon another person as further provided in this Chapter.

§ 13-404. Justification; Self-Defense.

A. Except as provided in subsection B of this section, a person is justified in threatening or using physical force against another when and to the extent a reasonable person would believe that physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful physical force.

B. The threat or use of physical force against another is not justified:

1. In response to verbal provocation alone; or

2. To resist an arrest that the person knows or should know is being made by a peace officer or by a person acting in a peace officer's presence and at his direction, whether the arrest is lawful or unlawful, unless the physical force used by the peace officer exceeds that allowed by law; or

3. If the person provoked the other's use or attempted use of unlawful physical force, unless:

(a) The person withdraws from the encounter or clearly communicates to the other his intent to do so reasonably believing he cannot safely withdraw from the encounter; and

(b) The other nevertheless continues or attempts to use unlawful physical force against the person.

§ 13-405. Justification; Use of Deadly Physical Force. A person is justified in threatening or using deadly physical force against another:

1. If such person would be justified in threatening or using physical force against the other under section 13-404; and

2. When and to the degree a reasonable person would believe that deadly physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly physical force.

§ 13-406. Justification; Defense of a Third Person. A person is justified in threatening or using physical force or deadly physical force against another to protect a third person if:

1. Under the circumstances as a reasonable person would believe them to be, such person would be justified under section 13-404 or 13-405 in threatening or using physical force or deadly physical force to protect himself against the unlawful physical force of deadly physical force a reasonable person would believe is threatening the third person he seeks to protect; and

2. A reasonable person would believe that such person's intervention is immediately necessary to protect the third person.

§ 13-407. Justification; Use of Physical Force in Defense of Premises.

A. A person or his agent in lawful possession or control of premises is justified in threatening to use of deadly physical force or in threatening or using physical force against another when and to the extent that a reasonable person would believe it immediately necessary to prevent or terminate the commission or attempted commission of a criminal trespass by the other person in or upon the premises.

B. A person may use deadly physical force under subsection A of this section only in the defense of himself or third persons as described in section 13-405 or section 13-406.

C. In this section, "premises" means any real property and any structure, movable or immovable, permanent or temporary, adapted for both human residence and lodging, whether occupied or not.

§ 13-408. Justification; Use of Physical Force in Defense of Property. A person is justified in using physical force against another when and to the extent that a reasonable person would believe it necessary to prevent what a reasonable person would believe is an attempt or commission by the other person of theft or criminal damage involving tangible movable property under his possession or control, but such person may use deadly physical force under these circumstances as provided in sections 13-405, 13-406 and 13-411.

§ 13-409. Justification; Use of Physical Force in Law Enforcement. A person is justified in threatening or using physical force against another if in making or assisting in making an arrest or detention or in preventing or assisting in preventing the escape after arrest or detention of that other person, such person uses or threatens to use physical force and all of the following exist:

1. A reasonable person would believe that such force is immediately necessary to effect the arrest or detention or prevent the escape.

2. Such person makes known the purpose of the arrest or detention or believes that it is otherwise known or cannot reasonably be made known to the person to be arrested or detained.

3. A reasonable person would believe the arrest or detention to be lawful.

§ 13-410. Justification; Use of Deadly Force in Law Enforcement.

A. The threatened use of deadly physical force by a person against another is justified pursuant to section 13-409 only if a reasonable person effecting the arrest or preventing the escape would believe the suspect or escapee is:

1. Actually resisting the discharge of a legal duty with deadly physical force or with the apparent capacity to use deadly physical force; or

2. A felon who has escaped from lawful confinement; or

3. A felon who is fleeing from justice or resisting arrest with physical force.

B. The use of deadly physical force by a person other than a peace officer against another is justified pursuant to section 13-409 only if a reasonable person effecting the arrest or preventing the escape would believe the suspect or escapee is actually resisting the discharge of a legal duty with physical force or with the apparent capacity to use deadly physical force.

C. The use of deadly force by a peace officer against another is justified pursuant to section 13-409 only when the peace officer reasonably believes that it is necessary:

1. To defend himself or a third person from what the peace officer reasonably believes to be the use or imminent use of deadly physical force.

2. To effect an arrest or prevent the escape from custody of a person whom the peace officer reasonably believes:

(a) Has committed, attempted to commit, is committing or is attempting to commit a felony involving the use or a threatened use of a deadly weapon.

(b) Is attempting to escape by use of a deadly weapon.

(c) Through past or present conduct of the person which is known by the peace officer that the person is likely to endanger human life or inflict serious bodily injury to another unless apprehended without delay.

(d) Is necessary to lawfully suppress a riot if the person or another person participating in the riot is armed with a deadly weapon.

D. Notwithstanding any other provisions of this Chapter, a peace officer is justified in threatening to use deadly physical force when and to the extent a reasonable officer believes it necessary to protect himself against another's potential use of physical force or deadly physical force.

This Section essentially limits the powers of law enforcement officers on the Fort Yuma Reservation to use deadly force only under the above conditions. The Tribe recognizes that until it is allowed by federal law to exercise its full range of criminal jurisdiction, use of deadly force to apprehend suspects for violations of the current tribal law is unwarranted. Thus, law enforcement officers may use deadly force only if they are dealing with individuals suspected of committing offenses that would be felonies under state or federal law.

§ 13-411. Justification; Use of Force in Crime Prevention.

A. A person is justified in threatening or using both physical force and deadly physical force against another if and to the extent the person reasonably believes that physical force or deadly physical force is immediately necessary to prevent the other's commission of arson of an occupied structure under section 13-1704, burglary in the second or first degree under section 13-1507 or 13-1508, kidnapping under section 13-1304, manslaughter under section 13-1103, second or first degree murder under section 13-1104 or 13-1105, sexual conduct with a minor under section 13-1405, sexual assault under section 13-1406, child molestation under section 13-1410, armed robbery under section 13-1904, or aggravated assault under section 13-1204, subsection A, paragraphs 1 and 2.

B. There is no duty to retreat before threatening or using deadly physical force justified by subsection A of this section.

C. A person is presumed to be acting reasonably for the purposes of this section if he is acting to prevent the commission of any of the offenses listed in subsection A of this section.

This Section restricts the use of physical and deadly force for the same reasons use of deadly force is limited in section 13-410.

§ 13-412. Duress.

A. Conduct which would otherwise constitute an offense is justified if a reasonable person would believe that he was compelled to engage in the proscribed conduct by the threat or use of immediate physical force against his person or the person of another which resulted or could result in serious physical injury which a reasonable person in the situation would not have resisted.

B. The defense provided by subsection A of this section is unavailable if the person intentionally, knowingly or recklessly placed himself in a situation in which it was probable that he would be subjected to duress.

C. The defense provided by subsection A of this section is unavailable for offenses involving homicide or serious physical injury.

§ 13-413. No Civil Liability for Justified Conduct. No person shall be subject to civil liability for engaging in conduct otherwise justified pursuant to the provisions of this Chapter.

Chapter 5
Responsibility

§ 13-501. Immaturity. A person less than fourteen (14) years old at the time of the conduct charged is not criminally responsible in the absence of clear proof that at the time of committing the conduct charged the person knew it was wrong.

§ 13-503. Effect of Alcohol or Drug Use. Temporary intoxication resulting from the voluntary ingestion, consumption, inhalation or injection of alcohol, an illegal substance under chapter 34 of Arizona Revised Statutes or other psychoactive substances of the abuse of prescribed medications does not constitute insanity and is not a defense for any criminal act or requisite state of mind.

Chapter 6
Classifications of Offenses and Authorized Dispositions of Offenders

§ 13-601.1. Sentencing Standards. If a person is convicted of an offense, the Trial Division shall impose a sentence in order to do substantial justice and to effect the purposes of this Code. Sentences shall consist of the following:

A. A term of imprisonment as follows:

1. If the conviction is of a Class A offense, a mandatory term of imprisonment not to exceed three hundred sixty-five (365) days and not less than thirty (30) days;

2. If the conviction is of a Class B offense, a mandatory term of imprisonment not to exceed three hundred sixty-five (365) days and not less than ten (10) days;

3. If the conviction is of a Class C offense, a term of imprisonment not to exceed three hundred sixty-five (365) days;

4. If the conviction is of a Class D offense, a term of imprisonment not to exceed one hundred eighty (180) days; or

B. A fine as follows:

1. If the conviction is of a Class A or B offense, a fine not to exceed $5,000.00;

2. If the conviction is of a Class C or D offense, a fine not to exceed $1,000.00; or

C. Imprisonment and a fine; or

D. Imprisonment, a fine and restitution.

This Section approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Section departs from the Arizona sentencing scheme in recognition of the limits contained in the Indian Civil Rights Act. This Section specifies that the Trial Division must impose a term of incarceration for Class A and B offenses but otherwise permits the Trial Division discretion in imposing other penalties so that the ultimate goals of this Code in sentencing offenders--doing justice that is in the best interest of the Quechan Tribe and the Reservation community--may be accomplished.

§ 13-601.2 Upward Departures in Sentencing for Dangerous Offenders, Repetitive Offenders and Crimes Against Children.

A. Definitions.

1. "Dangerous offender" means a person who has ever been

(a) convicted under tribal law of the following offenses: assault (section 13-1203), drive-by shooting (section 13-1209), and misconduct involving weapons (section 13-3102 [Class B offense]); or

(b) convicted of a dangerous offense as defined by the law of the jurisdiction in which the conviction occurred.

2. "Repetitive offender" means a person who has ever been convicted of any three offenses under this Code.

3. "Crime against child" means any offense under this Code committed against a victim who is fourteen (14) years of age or less.

B. Increased Sentences for Dangerous Offenders. Upon an express finding by the Trial Division that a person convicted of a Class A or Class B offense under this Title is a dangerous offender, the Trial Division may in its discretion and notwithstanding section 13-601.1 of this Title, impose a mandatory term of imprisonment not to exceed ninety (90) days; if the person is convicted of a Class C or Class D offense and the Trial Division makes an express finding that the person is a dangerous offender, the Trial Division in its discretion and notwithstanding the provisions of section 13-601.1, may impose a mandatory term of imprisonment not to exceed thirty (30) days.

C. Increased Sentences for Repetitive Offenders. Upon an express finding by the Trial Division that a person convicted of an offense under this Title is a repetitive offender, the Trial Division may, in its discretion and notwithstanding section 13-601.1, impose a mandatory term of imprisonment no less than any mandatory imprisonment required by section 13-601.1 and

1. Not to exceed sixty (60) days, if the conviction is of a Class A offense;

2. Not to exceed twenty (20) days, if the conviction is of a Class B offense;

3. Not to exceed seven (7) days, if the conviction is of a Class C offense;

4. Not to exceed three (3) days, if the conviction is of a Class D offense.

D. Increased Sentences for Crimes Against Children. Upon an express finding by the Trial Division that a person has been convicted of a crime against a child, the Trial Division may in its discretion and notwithstanding the provisions of section 13-601.1, impose mandatory terms of imprisonment as follows:

1. One hundred eighty (180) days, if the conviction is of a Class A offense;

2. Sixty (60) days, if the conviction is of a Class B offense;

3. Fourteen (14) days, if the conviction is of a Class C offense; or

4. Seven (7) days, if the conviction is of a Class D offense.

§ 13-603. Restitution.

C. If a person is convicted of an offense, the Trial Division may require the convicted person to make restitution to the victim of the crime or to the immediate family of the victim if the victim has died, in the full amount of the economic loss as determined by the Trial Division and in the manner as determined by the Trial Division or the Trial Division's designee pursuant to chapter 8 of this Title. Restitution ordered pursuant to this subsection shall be paid to the Tribal Court Clerk for disbursement to the victim and is a criminal penalty for the purposes of a federal bankruptcy involving the person convicted of an offense.

G. If a person or an enterprise is convicted of any offense, the Trial Division may, in addition to any other sentence authorized by law, order the forfeiture, suspension or revocation of any charter, license, permit or prior approval granted to such person or an enterprise by the Tribe.

Chapter 7
Imprisonment

§ 13-708. Consecutive Terms of Imprisonment. Except as otherwise provided by statute, if multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the Trial Division shall run consecutively unless the Trial Division expressly directs otherwise, in which case the Trial Division shall set forth on the record the reason for its sentence.

§ 13-709. Calculation of Terms of Imprisonment.

A. A sentence of imprisonment commences when sentence is imposed if the defendant is in custody or surrenders into custody at that time. Otherwise it commences when the defendant becomes actually in custody.

B. All time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment for such offense shall be credited against the term of imprisonment otherwise provided for by this Chapter.

C. If a sentence of imprisonment is vacated and a new sentence is imposed on the defendant for the same offense, the new sentence is calculated as if it had commenced at the time the vacated sentence was imposed, and all time served under the vacated sentence shall be credited against the new sentence.

D. If a person serving a sentence of imprisonment escapes from custody, the escape interrupts the sentence. The interruption continues until the person is apprehended and confined for the escape or is confined and subject to a detainer for the escape. Time spent in actual custody prior to return under this subsection shall be

credited against the term authorized by law if custody rested on an arrest or surrender for the escape itself, or if the custody arose from an arrest on another charge which culminated in a dismissal or an acquittal, and the person was denied admission to bail pending disposition of that charge because of a warrant lodged against such person arising from the escape.

E. The sentencing court shall include the time of commencement of sentence under subsection A of this section and the computation of time credited against sentence under subsection B, C or D, in the original or an amended commitment order, under procedures established by rule of court.

Chapter 8
Restitution and Fines

§ 13-804. Restitution for Offense Causing Economic Loss; Fine for Reimbursement of Public Monies.

A. Upon a defendant's conviction for an offense causing economic loss to any person, or entity, including the Tribe, the Trial Division in its sole discretion may order that all or any portion of the fine imposed be allocated as restitution to be paid by the defendant to any person who suffered an economic loss as caused by the defendant's conduct.

B. In ordering restitution for economic loss pursuant to section 13-603 or subsection A or C of this section, the Trial Division shall consider all losses caused by the criminal offense or offenses for which the defendant has been convicted.

C. The Trial Division shall not consider the economic circumstances of the defendant in determining the amount of restitution.

D. After the Trial Division determines the amount of restitution, the Trial Division or a staff member designated by the court, shall specify the manner in which the restitution is to be paid. In deciding the manner in which the restitution is to be paid, the court or a staff member designated by the court, shall make reasonable efforts to contact any victim who has requested notice and shall take into account the views of the victim and consider the economic circumstances of the defendant. The court shall make all reasonable efforts to ensure that all persons entitled to restitution pursuant to a court order receive full restitution. The Trial Division may enter any reasonable order necessary to accomplish this.

E. If more than one defendant is convicted of the offense which caused the loss, the defendants are jointly and severally liable for the restitution.

F. If the Trial Division does not have sufficient evidence to support a finding of the amount of restitution or the manner in which the restitution should be paid, it may conduct a hearing upon the issue according to procedures established by rule of

court. The Trial Division may call the defendant to testify and to produce information or evidence. The prosecutor does not represent persons who have suffered economic loss but may present evidence or information relevant to the issue of restitution.

G. After making the determinations in subsection B of this section the Trial Division shall enter a restitution order for each defendant which sets forth all of the following:

1. The total amount of restitution the defendant owes all persons.

2. The total amount of restitution owed to each person.

3. The manner in which the restitution is to be paid to each person.

The Tribal Court Clerk shall serve, by certified mail, return receipt requested, a copy of each order of restitution upon the defendant. In addition to the court file, the Tribal Court Clerk shall maintain a file for each person against whom an order of restitution has been issued, and the file shall be indexed by the defendant's full name, social security number and birthdate. The file shall contain a copy of each order of restitution issued against that person. The Tribal Court Clerk shall maintain a ledger sheet for each such file indicating the full amount of restitution that person owes and the payment status.

H. The restitution order under subsection G of this section may be supported by evidence or information introduced or submitted to the Trial Division before sentencing or any evidence previously heard by the judge during the proceedings.

I. A primary restitution lien shall be created against the defendant and in favor of the Tribe for the total amount of the restitution, fine, court costs, incarceration costs and fees ordered, if any.

J. A secondary restitution lien shall be created against the Tribe in favor of a victim of the defendant ordered to make restitution. Monies received by the court from the defendant shall be applied first to satisfy the restitution order entered by the court and the payment of any restitution order shall be assigned first to discharge the restitution order, including any per capita payment that is owed to the defendant by the Tribe.

K. If the defendant, the Tribe or persons entitled to restitution disagree with the manner of payment established in subsection D of this section, the defendant, court or person entitled to restitution may petition the Trial Division at any time to change the manner in which the restitution is paid. Before modifying the order pertaining to the manner in which the restitution is paid, the Trial Division shall give notice and an opportunity to be heard to the defendant, the prosecutor and, upon request, other persons entitled to restitution pursuant to a court order.

§ 13-807. Civil Actions By Victims or Other Persons. A defendant convicted in a criminal proceeding is precluded from subsequently denying in any civil proceeding brought by the victim or the Tribe against the criminal defendant the essential allegations of the criminal offense of which he was adjudged guilty, including judgments of guilt resulting from no contest pleas. An order of restitution in favor of a person does not preclude that person from bringing a separate civil action and proving in that action damages in excess of the amount of the restitution order.

§ 13-809. Priority of Payments; Application to Traffic Offenses; Orders to Reimburse Public Monies.

A. If a defendant is sentenced to pay a fine, payment and enforcement of restitution take priority over payment to the Tribe.

§ 13-810. Consequences of Nonpayment of Fines or Restitution.

A. If a defendant sentenced to pay a fine, fee, restitution or incarceration costs defaults in the payment of such fine, fee, restitution or incarceration costs or of any installment, the Tribal Court Clerk shall notify the prosecutor, the Trial Division and any person entitled to restitution pursuant to a court order. The Trial Division, on motion of the prosecuting attorney, on petition of any person entitled to restitution pursuant to a court order or on its own motion shall require the defendant to show cause why the defendant's default should not be treated as contempt and may issue a summons or a warrant of arrest for the defendant's appearance.

B. At any hearing on the order to show cause the Trial Division, the prosecutor or a person entitled to restitution may examine the defendant under oath concerning the defendant's financial condition, employment and assets or on any other matter relating to the defendant's ability to pay restitution.

C. If the Trial Division finds that the defendant has wilfully failed to pay a fine, fee, restitution or incarceration costs or finds that the defendant has intentionally refused to make a good faith effort to obtain the monies required for the payment, the Trial Division shall find that the default constitutes contempt and may do one of the following:

1. Order the defendant incarcerated in the tribal jail until the fine, fee, restitution or incarceration costs, or a specified part of the fine, fee, restitution or incarceration costs, is paid.

3. Enter an order pursuant to section 13-812. The levy or execution for the collection of a fine, fee, restitution or incarceration costs does not discharge a defendant who is incarcerated for nonpayment of the fine, fee, restitution or incarceration costs until the amount of the fine, fee, restitution or incarceration costs is collected.

D. If the Trial Division finds that the default is not wilful and that the defendant cannot pay despite sufficient good faith efforts to obtain the monies, the Trial Division may take any lawful action including:

1. Modify the manner in which the restitution, fine, fee or incarceration costs are to be paid.

2. Enter any reasonable order which would assure compliance with the order to pay.

3. Enter an order pursuant to section 13-812. The levy or execution for the collection of a fine, fee, restitution or incarceration costs does not discharge a defendant incarcerated for nonpayment of the fine, fee, restitution or incarceration costs until the amount of the fine, fee, restitution or incarceration costs is collected.

E. If a fine, fee, restitution or incarceration costs are imposed on an enterprise it is the duty of the person or persons authorized to make disbursement from the assets of the enterprise to pay them from those assets, and their failure to do so shall be held a contempt unless they make the showing required in subsection A of this section.

§ 13-812. Garnishment for Nonpayment of Fines, Fees, Restitution or Incarceration Costs.

A. After a hearing on an order to show cause, the Trial Division may issue a writ of criminal garnishment for any fine, fee, restitution or incarceration costs.

B. The Trial Division may order garnishment for monies that are owed to a victim or the Trial Division, the Tribal Court Clerk or the prosecutor pursuant to a court order to pay any fine, fee, restitution or incarceration costs. A writ of criminal garnishment applies to any of the following:

1. The defendant's earnings.

2. Indebtedness that is owed to a defendant by a garnishee for amounts that are not earnings.

3. Monies that are held by a garnishee on behalf of a defendant.

4. The defendant's personal property that is in the possession of a garnishee.

5. If the garnishee is a corporation, shares or securities of a corporation or a proprietary interest in a corporation that belongs to a defendant.

6. The defendant's earnings or monies that are held by the tribal law enforcement department while the defendant is in the custody of the Tribe.

Chapter 10
Preparatory Offenses

§ 13-1001. Attempt; Classifications.

A. A person commits attempt if, acting with the kind of culpability otherwise required for commission of an offense, such person:

1. Intentionally engaged in conduct which would constitute an offense if the attendant circumstances were as such person believes them to be; or

2. Intentionally does or omits to do anything which, under the circumstances as such person believes them to be, is any step in a course of conduct planned to culminate in commission of an offense; or

3. Engages in conduct intended to aid another to commit an offense, although the offense is not committed or attempted by the other person, provided his conduct would establish his complicity under chapter 3 if the offense were committed or attempted by the other person.

B. It is no defense that it was impossible for the person to aid the other party's commission of the offense, provided such person could have done so had the circumstances been as he believed them to be.

C. Attempt is a:

1. Class B offense if the offense attempted is a Class A offense;

2. Class C offense if the offense attempted is a Class B offense;

3. Class D offense if the offense attempted is a Class C offense.

This Section approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. The substantive definition of attempt is unchanged. Subsection C., which replaces Ariz. Rev. Stat. § 13-1001.C., substantially follows Arizona's system of classifying attempted crimes as one level below the crime attempted, but accommodates the Tribe's classification system.

§ 13-1002. Solicitation; Classifications.

A. A person, other than a peace officer acting in his official capacity within the scope of his authority and in the line of duty, commits solicitation if, with the intent to promote or facilitate the commission of an offense under this Code or a felony or misdemeanor under the laws of another jurisdiction, such person commands, encourages, requests or solicits another person to engage in specific conduct which would constitute

the offense, felony or misdemeanor or which would establish the other's complicity in its commission.

B. Solicitation is a:

1. Class B offense if the offense solicited is a Class A offense or felony;

2. Class C offense if the offense solicited is a Class B offense or misdemeanor.

The substantive definition of solicitation is unchanged. Subsection B, which replaces Ariz. Rev. Stat. § 13-1002(B), substantially follows Arizona's system of classifying solicitation crimes as one level below the crime solicited but accommodates the Tribe's classification system. The Tribe's classification system allows for a solicitation charge to be made for a solicited act that is a crime under the law of another jurisdiction. Note that this Code does not establish a solicitation offense for solicitation of Class D offenses or petty misdemeanors.

§ 13-1003. Conspiracy; Classification.

A. A person commits conspiracy if, with the intent to promote or aid the commission of an offense, such person agrees with one or more persons that at least one of them or another person will engage in conduct constituting the offense and one of the parties commits an overt act in furtherance of the offense, except that an overt act shall not be required if the object of the conspiracy was to commit any felony upon the person of another, or to commit an offense under section 13-1508 or 13-1704.

B. If a person guilty of conspiracy, as defined in subsection A of this section, knows or has reason to know that a person with whom such person conspires to commit an offense has conspired with another person or persons to commit the same offense, such person is guilty of conspiring to commit the offense with such other person or persons, whether or not such person knows their identity.

C. A person who conspires to commit a number of offenses is guilty of only one conspiracy if the multiple offenses are the object of the same agreement or relationship and the degree of the conspiracy shall be determined by the most serious offense conspired to. Conspiracy is an offense of the same class as the most serious offense which is the object of or result of the conspiracy.

§ 13-1004. Facilitation; Classification.

A. A person, other than a peace officer acting in his official capacity within the scope of his authority and in the line of duty, commits facilitation if, acting with knowledge that another person is committing or intends to commit an offense, such person knowingly provides such other person with means or opportunity for the commission of the offense and which in fact aids such person to commit the offense.

B. Facilitation is a:

1. Class C offense if the offense facilitated is a Class A or B offense or a felony.

2. Class D offense if the offense facilitated is a Class C offense or a misdemeanor.

§ 13-1005. Renunciation of Attempt, Solicitation, Conspiracy or Facilitation; Defenses.

A. In a prosecution for attempt, conspiracy or facilitation, it is a defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of his 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 attempt, conspiracy or facilitation.

B. In a prosecution for solicitation, it is a defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent completed both of the following acts:

1. Notified the person solicited.

2. Gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result solicited.

C. A renunciation is not voluntary and complete within the meaning of this section if it is motivated in whole or in part by:

1. A belief that circumstances exist which increase the probability of immediate detection or apprehension of the accused or another participant in the criminal enterprise or which render more difficult the accomplishment of the criminal purpose; or

2. A decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim, place or another but similar objective.

D. A warning to law enforcement authorities is not timely within the meaning of this section unless the authorities, reasonably acting upon the warning, would have the opportunity to prevent the conduct or result. An effort is not reasonable within the meaning of this section unless the defendant makes a substantial effort to prevent the conduct or result.

§ 13-1006. Effect of Immunity, Irresponsibility or Incapacity of A Party to Solicitation, Conspiracy or Facilitation.

A. It is not a defense to a prosecution for solicitation, conspiracy or facilitation that a person solicited, facilitated or with whom the defendant conspired could not be guilty of committing the offense because:

1. Such person is, by definition of the offense, legally incapable in an individual capacity of committing the offense; or

2. Such person is not criminally responsible as defined in chapter 5 of this Title, or has an immunity to prosecution or conviction for the commission of the offense; or

3. Such person does not have the state of mind sufficient for the commission of the offense in question.

B. It is not a defense to a prosecution for solicitation or conspiracy that the defendant is, by definition of the offense, legally incapable in an individual capacity of committing the offense that is the object of the solicitation or conspiracy.

Chapter 12
Assault and Related Offenses

§ 13-1202. Threatening or Intimidating; Classification.

A. A person commits threatening or intimidating if such person threatens or intimidates by word or conduct:

1. To cause physical injury to another person or serious damage to the property of another; or

2. To cause, or in reckless disregard to causing, serious public inconvenience including, but not limited to, evacuation of a building, place of assembly, or transportation facility; or

3. To cause physical injury to another person or damage to the property of another in order to promote, further or assist in the interests of or to cause, induce or solicit another person to participate in a criminal street gang, a criminal syndicate or a racketeering enterprise.

B. Threatening or intimidating pursuant to subsection A.1 or A.2 of this section is a Class C offense. Threatening or intimidating pursuant to subsection A.3 is a Class B offense.

§ 13-1203. Assault; Classification.

A. A person commits assault by:

1. Intentionally, knowingly or recklessly causing any physical injury to another person; or

2. Intentionally placing another person in reasonable apprehension of imminent physical injury; or

3. Knowingly touching another person with the intent to injure, insult or provoke such person.

B. Assault committed intentionally or knowingly pursuant to subsection 1 of this section is a Class B offense. Assault committed recklessly pursuant to subsection 2 or 3 is a Class C offense. Assault committed pursuant to subsection 3 is a Class D offense.

§ 13-1204. Aggravated Assault; Classification.

A. A person commits aggravated assault if such person commits assault as defined in section 13-1203 under any of the following circumstances:

1. If such person causes serious physical injury to another.

2. If such person uses a deadly weapon or dangerous instrument.

3. If such person commits the assault after entering the private home of another with the intent to commit the assault.

5. If such person commits the assault knowing or having reason to know that the victim is a peace officer, or a person summoned and directed by such officer while engaged in the execution of any official duties.

6. If such person commits the assault knowing or having reason to know the victim is a teacher or other person employed by any school and such teacher or other employee is upon the grounds of a school or grounds adjacent to such school or is in any part of a building or vehicle used for school purposes, or any teacher or school nurse visiting a private home in the course of his professional duties, or any teacher engaged in any authorized and organized classroom activity held on other than school grounds.

7. If such person is in the custody of the Tribe, the Tribe's law enforcement agency, or adult or juvenile detention facility of the Tribe or any other entity contracting with the Tribe, that has responsibility for sentenced or unsentenced prisoners, or subject to the custody of personnel of the Tribe, agency, jail, entity or

detention facility and commits the assault knowing or having reason to know the victim is an employee of the Tribe, agency, jail, entity or detention facility acting in an official capacity.

8. If such person commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired.

9. If such person commits the assault knowing or having reason to know that the victim is a fire fighter, fire investigator, fire inspector, emergency medical technician or paramedic engaged in the execution of any official duties, or a person summoned and directed by such individual while engaged in the execution of any official duties.

10. If such person commits the assault knowing or having reason to know that the victim is a licensed health care practitioner or a person summoned and directed by such licensed health care practitioner while engaged in his professional duties. The provisions of this paragraph do not apply if the person who commits the assault is seriously mentally ill or is afflicted with Alzheimer's disease or related dementia.

11. If such person commits assault by any means of force which causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part, or a fracture of any body part.

B. Aggravated assault pursuant to subsection A of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a Class A offense; otherwise, aggravated assault pursuant to subsection A is a Class B offense.

Subsection A.4 of the corresponding Arizona Revised Statute is omitted from this Code because the Quechan Code provides for upward departures in sentencing for crimes against children, so subsection A.4 would be redundant.

§ 13-1205. Unlawfully Administering Intoxicating Liquors, Narcotic Drug or Dangerous Drug; Classification.

A. A person commits unlawfully administering intoxicating liquors, a narcotic drug or dangerous drug if, for a purpose other than lawful medical or therapeutic treatment, such person knowingly introduces or causes to be introduced into the body of another person without such other person's consent, intoxicating liquors, a narcotic drug or dangerous drug.

B. Unlawfully administering an intoxicating liquor, a narcotic drug or a dangerous drug is a Class B offense.

This section was approved by the Quechan Indian Tribe, Resolution R-187-96, dated December 11, 1996. This section is similar to the same numbered section in the Arizona Revised Statutes Annotated that was in effect at the time of enactment of this Code. The classification of the offenses in § 13-4244.B is made independent of Arizona law and is based on Quechan tribal law, culture and tradition.

§ 13-1208. Assault; Vicious Animals; Classification; Exception.

A. A person who owns a dog which the owner knows or has reason to know has a propensity to attack, to cause injury or otherwise endanger the safety of human beings without provocation or which has been found to be a vicious animal by a court of competent authority, which bites, inflicts physical injury on or attacks a human being while at large or while under restraint or in an enclosure without the notice required in subsection B of this section is guilty of a Class C offense.

B. A person who owns a dog which the owner knows or has reason to know that the dog has a propensity to attack, to cause injury or otherwise endanger the safety of human beings without provocation or which has been found to be a vicious animal and who keeps the dog or vicious animal in an enclosed area or yard outside of a residence or structure on the property who fails to post a notice indicating the presence of the dog or vicious animal is guilty of a Class D offense.

C. The provisions of this section shall not apply to dogs owned or used by a law enforcement agency and which are used in the performance of police work.

This Section approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. Section 1208, which is based on Ariz. Rev. Stat. § 13-1208, alters Arizona's substantive definition of the offense in that it makes it a vicious animal's owner guilty of a crime when the animal bites a human being with no warning while the animal is either at large or under restraint. Arizona law makes it a crime when a vicious animal bites only while at large. In addition, this section makes it a crime for an owner of such an animal to not post written notice of the animal's vicious nature. The classification of the offense is made accordance with the Quechan Tribe's offense classification system.

§ 13-1209. Drive-By Shooting; Classification; Definitions.

A. A person commits drive-by shooting by intentionally discharging a weapon from a motor vehicle at a person, another occupied motor vehicle or an occupied structure.

B. Upon conviction, the Tribal Court shall transmit the judgment of conviction to the department of transportation of the state issuing the convicted person's driver's license. The judgment of conviction shall specify that the convicted person shall be prohibited, pursuant to the Tribe's exclusion power and notwithstanding the issuance of a driver's license by any jurisdiction, from operating a motor vehicle within the boundaries of the Fort Yuma Reservation for a period of one (1) year.

C. Drive-by shooting is a Class A offense.

Section 1209, which is based on Ariz. Rev. Stat. § 13-1209, adopts Arizona's substantive definition of the offense. Subsection B requires the Tribal Court to alert state authorities to the person's conviction of a

drive-by shooting and leaves it to the discretion of the state authorities to revoke that person's state driver's license pursuant to state law. Regardless of whether the issuing state revokes a convicted person's driver's license, this Code provides that the convicted person shall not operate a motor vehicle on the Reservation for a period of one year. The classification of the offense is done in accordance with the Quechan Tribe's offense classification system.

Chapter 13
Kidnapping and Related Offenses

§ 13-1301. Definitions. In this Chapter, unless the context otherwise requires:

1. "Relative" means a parent or stepparent, ancestor, descendant, sibling, uncle or aunt, including an adoptive relative of the same degree through marriage or adoption, or a spouse.

2. "Restrain" means to restrict a person's movements without consent, without legal authority, and in a manner which interferes substantially with such person's liberty, by either moving such person from one place to another or by confining such person. Restraint is without consent if it is accomplished by:

(a) Physical force, intimidation or deception; or

(b) Any means including acquiescence of the victim if the victim is a child less than eighteen years old or an incompetent person and the victim's lawful custodian has not acquiesced in the movement or confinement.

§ 13-1303. Unlawful Imprisonment; Classification.

A. A person commits unlawful imprisonment by knowingly restraining another person.

B. In any prosecution for unlawful imprisonment, it is a defense that:

1. The restraint was accomplished by a peace officer acting in good faith in the lawful performance of his duty; or

2. The defendant is a relative of the person restrained and the defendant's sole intent is to assume lawful custody of that person and the restraint was accomplished without physical injury.

C. Unlawful imprisonment is a Class B offense unless the victim is released voluntarily by the defendant without physical injury in a safe place prior to arrest in which case it is a Class C offense.

Chapter 14
Sexual Offenses

§ 13-1402. Indecent Exposure; Classification.

A. A person commits indecent exposure if he or she exposes his or her genitals or anus and another person is present, and the defendant is reckless about whether such other person, as a reasonable person, would be offended or alarmed by the act.

B. Indecent exposure is a Class D offense.

Chapter 15
Criminal Trespass and Burglary

§ 13-1501. Definitions. In this Chapter, unless the context otherwise requires:

1. "Enter or remain unlawfully" means an act of a person who enters or remains on premises when such person's intent for so entering or remaining is not licensed, authorized or otherwise privileged except when the entry is to commit theft of merchandise displayed for sale during normal business hours, when the premises are open to the public and the person does not enter any unauthorized areas of the premises.

2. "Entry" means the intrusion of any part of any instrument or any part of a person's body inside the external boundaries of a structure or unit of real property.

4. "Fenced residential yard" means a unit of real property immediately surrounding or adjacent to a residential structure and enclosed by a fence, wall, building or similar barrier, or any combination thereof.

5. "In the course of committing" means any acts performed by an intruder from the moment of entry to and including flight from the scene of a crime.

7. "Residential structure" means any structure, movable or immovable, permanent or temporary, adapted for both human residence and lodging whether occupied or not.

8. "Structure" means any building, object, vehicle, railroad car or place with sides and a floor, separately securable from any other structure attached to it and used for lodging, business, transportation, recreation or storage.

This section was amended by Resolution R-142-96, enacted August 30, 1996, by deleting the definitions of "fenced commercial yard" and "nonresidential structure."

§ 13-1504. Criminal Trespass; Classification.

A. A person commits criminal trespass in the first degree by knowingly:

1. Entering or remaining unlawfully in or on a residential structure, in a fenced residential yard, or in or on any nonresidential premises or structure.

2. Entering any residential yard and, without lawful authority, looking into the residential structure thereon in reckless disregard of infringing on the inhabitant's right of privacy.

3. Entering unlawfully on real property subject to a valid mineral claim or lease with the intent to hold, work, take or explore for minerals on such claim or lease.

4. Entering or remaining unlawfully on the property of another and burning, defacing, mutilating or otherwise desecrating a religious symbol or other religious property of another without the express permission of the owner of the property.

B. Criminal trespass in the first degree is a Class B offense if it is committed by entering or remaining unlawfully in or on a residential structure or committed pursuant to subsection A, paragraph 4. Criminal trespass in the first degree is a Class C offense if it is committed by entering or remaining unlawfully in a fenced residential yard or committed pursuant to subsection A.2 or A.3.

Section 13-1504(A)(1) was amended by Resolution R-142-96, enacted August 30, 1996, by deleting the word "or" following "residential structure" and adding the phrase "or in or on any nonresidential premises or structure" after "residential yard."

§ 13-1505. Possession of Burglary Tools; Classification.

A. A person commits possession of burglary tools by possessing any explosive, tool, instrument or other article adapted or commonly used for committing any form of burglary as defined in section 13-1508 and intending to use or permit the use of such an item in the commission of a burglary.

B. Possession of burglary tools is a Class D offense.

§ 13-1508. Burglary; Classification.

A. A person commits burglary by entering or remaining unlawfully in a structure or yard with the intent to commit any theft or any Class A or B offense under this Title or any act that would be a felony under federal or state law.

B. Burglary is a Class A offense if a person commits burglary by entering or remaining unlawfully in or on a nonresidential structure, a fenced commercial or

residential yard, or a residential structure and knowingly possesses explosives, a deadly weapon, or dangerous instrument in the course of committing any theft or any Class A or B offense under this Title or a felony under federal or state law; a Class B offense if burglary is committed in a residential structure; and a Class C offense if burglary is committed in a nonresidential structure or a fenced commercial or residential yard.

This Section departs from Arizona Revised Statutes §§ 13-1506, 13-1507 and 13-1508, in that "degrees" are removed and the different types of burglaries are classified in accordance with tribal law.

Chapter 17
Arson

§ 13-1701. Definitions. In this Chapter, unless the context otherwise requires:

1. "Damage" means any physical or visual impairment of any surface.

2. "Occupied structure" means any structure as defined in paragraph 4 in which one or more human beings either is or is likely to be present or so near as to be in equivalent danger at the time the fire or explosion occurs. The terms includes any dwelling house, whether occupied, unoccupied or vacant.

3. "Property" means anything other than a structure which has value, tangible or intangible, public or private, real or personal, including documents evidencing value or ownership.

4. "Structure" means any building, object, vehicle, watercraft, aircraft or place with sides and a floor, used for lodging, business, transportation, recreation or storage.

5. "Wildland" means any brush covered land, cutover land, forest, grassland or woods.

§ 13-1703. Arson of A Structure or Property; Classification.

A. A person commits arson of a structure or property by knowingly and unlawfully damaging a structure or property by knowingly causing a fire or explosion.

B. Arson of an unoccupied structure or property valued at more than one thousand dollars ($1,000.00) is a Class B offense. Arson of property is a Class C offense if the property had a value of less than one thousand dollars ($1,000.00).

§ 13-1704. Arson of an Occupied Structure; Classification.

A. A person commits arson of an occupied structure by knowingly and unlawfully damaging an occupied structure by knowingly causing a fire or explosion.

B. Arson of an occupied structure is a Class A offense.

Chapter 18
Theft

§ 13-1801. Definitions.

A. In this Chapter, unless the context otherwise requires:

1. "Check" means any check, draft or other negotiable or nonnegotiable instrument of any kind.

2. "Control" or "exercise control" means to act so as to exclude others from using their property except on the defendant's own terms.

3. "Credit" means an express agreement with the drawee for the payment of a check.

4. "Deprive" means to withhold the property interest of another either permanently or for so long a time period that a substantial portion of its economic value or usefulness or enjoyment is lost, or to withhold it with the intent to restore it only upon payment of reward or other compensation or to transfer or dispose of it so that it is unlikely to be recovered.

5. "Draw" means making, drawing, uttering, preparing, writing or delivering a check.

6. "Funds" mean money or credit.

7. "Issue" means to deliver or cause to be delivered a check to a person who thereby acquires a right against the drawer with respect to the check. A person who draws a check with intent that it be so delivered is deemed to have issued it if the delivery occurs.

8. "Material misrepresentation" means pretense, promise, representation or statement of present, past or future fact which is fraudulent and which, when used or communicated, is instrumental in causing the wrongful control or transfer of property or services. The pretense may be verbal or it may be a physical act.

9. "Means of transportation" means any vehicle.

10. "Obtain" means to bring about or receive the transfer of any interest in property, whether to a defendant or to another, or to secure performance of a service.

11. "Pass" means, for a payee, holder or bearer of a check which previously has been or purports to have been drawn and issued by another, to deliver a check, for a purpose other than collection, to a third person who by delivery acquires a right with respect to the check.

12. "Property of another" means property in which any person other than the defendant has an interest which the defendant is not privileged to infringe, including property in which the defendant also has an interest, notwithstanding 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 defendant is not deemed property of another person who has only a security interest in such property, even if legal title is in the creditor pursuant to a security agreement.

13. "Services" includes labor, professional service, transportation, cable television, telephone, gas or electricity services, accommodation in hotels, restaurants, leased premises or elsewhere, admission to exhibitions and use of vehicles or other movable property.

14. "Value" means the fair market value of the property or services at the time of the theft. Written instruments which do not have a readily ascertained market value have as their value either the face amount of indebtedness less the portion satisfied or the amount of economic loss involved in deprivation of the instrument, whichever is greater. When property has undeterminable value its value shall be determined by the trier of fact and, in reaching its decision, all relevant evidence may be considered including evidence of such property's value to its owner.

B. Amounts taken in thefts committed pursuant to one scheme or course of conduct, whether from one or several persons, may be aggregated in the indictment or information at the discretion of the state in determining the classification of the offense.

§ 13-1802. Theft; Classification.

A. A person commits theft if, without lawful authority, such person knowingly:

1. Controls property of another with the intent to deprive him of such property; or

2. Converts for an unauthorized term or use services or property of another entrusted to the defendant or placed in the defendant's possession for a limited, authorized term or use; or

3. Obtains property or services of another by means of any material misrepresentation with intent to deprive him of such property or services; or

4. Comes into control of lost, mislaid or misdelivered property of another under circumstances providing means of inquiry as to the true owner and appropriates such property to his own or another's use without reasonable efforts to notify the true owner; or

5. Controls property of another knowing or having reason to know that the property was stolen; or

6. Obtains services known to the defendant to be available only for compensation without paying or an agreement to pay such compensation or diverts another's services to his own or another's benefit without authority to do so.

B. The inferences set forth in section 13-2305 shall apply to any prosecution under the provisions of subsection A, paragraph 5, of this section.

C. Theft of property or services with a value of twenty-five thousand dollars or more is a Class A offense. Theft of property or services with a value of three thousand dollars ($3,000.00) or more but less than twenty-five thousand dollars is a Class B offense. Theft of property or services with a value of one thousand dollars ($1,000.00) or more but less than three thousand dollars ($3,000.00) is a Class C offense. Theft of any property or services valued at less than one thousand dollars ($1,000.00) is a Class D offense, unless such property is taken from the person of another or is a motor vehicle or a firearm, in which case the theft is a Class B offense.

D. A person who is convicted of a violation of subsection A, paragraphs 1 or 3, of this section that involved property with a value of one hundred thousand dollars ($100,000.00) or more is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis.

This Section approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. Section 1802, which is based on Ariz. Rev. Stat. § 13-1802, adopts Arizona's substantive definition of the offense but revises the classification of the offense in accordance with the Quechan Tribe's offense classification system. This revision required reclassifying the six levels of theft under Arizona law into four levels. Quechan law follows Arizona law by classifying the first two levels of theft, $25,000+ and $3,000-$25,000. Quechan law, however, revises the remaining four classifications under Arizona law ($2,000-$3,000; $1,000-$2,000; $250-$1,000; and under $250) by combining them into two classifications ($1,000-$3,000 and under $1,000).

§ 13-1803. Unlawful Use of Means of Transportation; Classification.

A. A person commits unlawful use of means of transportation if, without intent permanently to deprive, the person either:

1. Knowingly takes unauthorized control over another person's means of transportation.

2. Knowingly is transported or physically located in a vehicle that the person knows or has reason to know is in the unlawful possession of another person pursuant to paragraph 1 of this subsection or section 13-1802.

B. Unlawful use of means of transportation is a Class B offense.

§ 13-1805. Shoplifting; Detaining Suspect; Defense to Wrongful Detention; Civil Action By Merchant; Classification; Public Services in Lieu of Fines.

A. A person commits shoplifting if, while in an establishment in which merchandise is displayed for sale, such person knowingly obtains such goods of another with the intent to deprive him of such goods by:

1. Removing any of the goods from the immediate display or from any other place within the establishment without paying the purchase price; or

2. Charging the purchase price of the goods to a fictitious person or any person without his authority; or

3. Paying less than the purchase price of the goods by some trick or artifice such as altering, removing, substituting or otherwise disfiguring any label, price tag or marking; or

4. Transferring the goods from one container to another; or

5. Concealment.

B. Any person who knowingly conceals upon himself or another person unpurchased merchandise of any mercantile establishment while within the mercantile establishment shall be presumed to have the necessary culpable mental state pursuant to subsection A of this section.

C. A merchant, or his agent or employee, with reasonable cause, may detain on the premises in a reasonable manner and for a reasonable time any person suspected of shoplifting as defined in subsection A of this section for questioning or summoning a law enforcement officer.

D. Reasonable cause is a defense to a civil or criminal action against a peace officer, a merchant or an agent or employee of such merchant for false arrest, false or unlawful imprisonment or wrongful detention.

E. If a minor engages in conduct which violates subsection A of this section notwithstanding the fact that such minor may not be held responsible because of his minority, any merchant injured by the shoplifting of such minor may bring a civil action against the parent or legal guardian of such minor.

F. Any merchant injured by the shoplifting of an adult or emancipated minor in violation of subsection A of this section may bring a civil action against the adult or emancipated minor.

G. Shoplifting property with a value of more than twenty-five thousand dollars is a Class A offense. Shoplifting property with a value of more than three thousand

dollars ($3,000) but less than twenty-five thousand dollars ($25,000.00) is a Class B offense. Shoplifting property with a value of more than one thousand dollars ($1,000.00) but less than three thousand dollars ($3,000.00) is a Class C offense. Shoplifting property valued at one thousand dollars ($1,000.00) or less is a Class D offense, unless such property is a firearm in which case the shoplifting is a Class B offense.

H. The Trial Division may, in imposing sentence upon a person convicted of violating this section, require any person to perform public services designated by the court in addition to or in lieu of any fine which the Trial Division might impose.

I. A person who commits shoplifting and who has previously committed or been convicted within the past five (5) years of two or more offenses involving burglary, shoplifting, robbery or theft or who in the course of shoplifting entered the mercantile establishment with an artifice, instrument, container, device or other article that was intended to facilitate shoplifting is guilty of a Class B offense.

§ 13-1806. Unlawful Failure to Return Rented Property; Notice; Classification.

A. A person commits unlawful failure to return rented property if, without notice to and permission of the lessor of property, such person knowingly fails without good cause to return such property within seventy-two hours after the time provided for such return in the rental agreement.

B. If the property is not leased on a periodic tenancy basis, the lessor shall include within the rental agreement, in bold print, clear written notice to the lessee of the date and time on which return of the property is required and of the maximum penalties to which the lessee shall be subject upon failure to return the property within seventy-two hours of that date and time. If the property is leased on a periodic tenancy basis without a fixed expiration or return date the lessor shall include within the rental agreement, in bold print, clear written notice that the lessee is required to return the property within seventy-two hours from the date and time of the failure to pay any periodic lease payment required by the rental agreement.

C. It shall be a defense to prosecution under this section that the defendant was physically incapacitated and unable to request or obtain permission of the lessor to retain the property or that the property itself was in such a condition, through no fault of the defendant, that it could not be returned to the lessor within such time.

D. Unlawful failure to return rented property is a Class C offense unless the value of the property is under one hundred dollars ($100.00) in which case it is a Class D offense.

§ 13-1807. Issuing a Bad Check; Violation; Classification.

A. A person commits issuing a bad check if the person issues or passes a check knowing that the person does not have sufficient funds in or on deposit with the

bank or other drawee for the payment in full of the check as well as all other checks outstanding at the time of issuance.

B. Any of the following is a defense to prosecution under this section:

1. The payee or holder knows or has been expressly notified before the drawing of the check or has reason to believe that the drawer did not have on deposit or to the drawer's credit with the drawee sufficient funds to ensure payment on its presentation.

2. The check is postdated and sufficient funds are on deposit with the drawee on such later date for the payment in full of the check.

3. Insufficiency of funds results from an adjustment to the person's account by the credit institution without notice to the person.

C. Issuing a bad check is a Class C offense.

§ 13-1808. Presumptions Relating to Issuing a Bad Check; Proof of Presentation; Non-Payment; Protest; Notice.

A. For purposes of this Chapter, the issuer's knowledge of insufficient funds may be presumed if either:

1. The issuer had no account or a closed account with the bank or other drawee at the time the issuer issued the check.

2. Payment was refused by the bank or other drawee for lack of funds on presentation within thirty days after issue and the issuer failed to pay the holder in full the amount due on the check, together with reasonable costs, within twelve (12) days after receiving notice of that refusal.

B. If a person obtained property or secured performance of services by issuing or passing a check when the issuer did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check as well as all other checks then outstanding, the person's intent to deprive the owner of property or to avoid payment for service under section 13-1802 may be presumed if either:

1. The issuer had no account or a closed account with the bank or other drawee at the time the issuer issued the check.

2. Payment was refused by the bank or other drawee for lack of funds on presentation within thirty days after issue and the issuer failed to pay the holder in full the amount due on the check, together with reasonable costs, within twelve days after receiving notice of that refusal.

C. Nothing in this section prevents the prosecution from establishing the requisite intent by direct evidence.

D. Notice may be actual notice or notice in writing, sent by registered mail with return receipt requested and addressed to the issuer at the issuer's address shown on any of the following:

1. The check.

2. The records of the bank or other drawee.

3. The records of the person to whom the check is issued or passed.

E. The form of notice shall be substantially as provided in this Code.

F. If written notice is given in accordance with this section, it is presumed that the notice was received no later than five (5) days after it was sent.

§ 13-1809. Restitution; Deferred Prosecution.

A. The prosecuting attorney may prosecute any violation of section 13-1807.

B. A person charged with an offense under this Chapter may make restitution for the bad checks. Restitution shall be made through the tribal prosecutor's office if collection and processing were initiated through that office. Restitution shall include at a minimum the face amount of the check. The fact that restitution to the party injured is made and that any costs of filing with the prosecuting attorney are paid is a mitigating factor in any imposition of punishment for any violation of this Chapter. On sentencing, the Trial Division may require any person convicted under this Chapter to make restitution in an amount not to exceed twice the amount of the dishonored check or fifty dollars ($50.00), whichever is greater, together with all applicable court costs and fees. This is in addition to any other punishment imposed under this Chapter.

D. The prosecuting attorney may collect the fee from any person who is a party to an offense described in this section.

E. The amount of the fee for each check shall not exceed:

1. Fifty dollars ($50.00) if the face amount of the check does not exceed one hundred dollars.

2. Seventy-five dollars ($75.00) if the face amount of the check is greater than one hundred dollars ($100.00) but does not exceed three hundred dollars ($300.00).

3. One hundred dollars ($100.00) if the face amount of the check is greater than three hundred dollars ($300.00) but does not exceed one thousand dollars ($1,000.00).

4. Fifteen percent (15%) of the face amount of the check if the check is greater than one thousand dollars ($1,000.00).

F. If the person from whom the fee is collected was a party to the offense of forgery under section 13-2002 and the offense was committed by altering the face amount of the check, the face amount as altered governs for the purpose of determining the amount of the fee prescribed in subsection E of this section.

§ 13-1812. Bank Records; Subpoenas; Affidavit of Dishonor; Affidavit of Loss.

A. The prosecuting attorney may issue a subpoena duces tecum to a financial institution to obtain account records or affidavits of dishonor in an investigation or prosecution of any violation of section 13-1802, 13-1807 or 13-2002.

B. The subpoena shall identify the subject of the investigation, the account or accounts under investigation and a specific time period that is relevant to the investigation or prosecution.

C. Account records may include copies of any account agreement between the drawee financial institution and the subject of the investigation, signature cards, monthly statements, correspondence or other records of communication between the financial institution and the subject of the investigation.

D. An authorized representative of a drawee financial institution may certify bank records that are obtained by subpoena if all of the following apply:

1. The bank records are the regular account records that are used and keep by the drawee financial institution.

2. The bank records are made at or near the time the underlying transactions occur in the ordinary course of business.

3. The bank records are made from information that is transmitted by a person who has firsthand knowledge acquired in the course of the drawee financial institution's regular course of business.

E. At a trial for a violation of section 13-1802, 13-1807 or 13-2002, certified bank records that are obtained by subpoena may be introduced in evidence and constitute prima facie evidence of the facts contained in the records.

F. At a trial for a violation of section 13-1802, 13-1807 or 13-2002, an affidavit of dishonor may be introduced in evidence and constitutes prima facie evidence of either:

1. The refusal of a drawee financial institution to pay a check because the drawer had no account or a closed account with the drawee at the time a check was issued or passed.

2. The refusal of a drawee financial institution to pay a check because of insufficiency of the drawer's funds at the time a check was issued or passed.

G. A certification of bank records or an affidavit of dishonor that is acknowledged by any notary public or other officer who is authorized by law to take acknowledgements shall be received in evidence without further proof of its authenticity.

Chapter 19
Robbery

§ 13-1901. Definitions. In this Chapter, unless the context otherwise requires:

1. "Force" means any physical act directed against a person as a means of gaining control of property.

2. "In the course of committing" includes any of the defendant's acts beginning with the initiation and extending through the flight from a robbery.

3. "Property of another" means property of another as defined in section 13-1801.

4. "Threat" means a verbal or physical menace of imminent physical injury to a person.

§ 13-1902. Robbery; Classification.

A. A person commits robbery if in the course of taking any property of another from his person or immediate presence and against his will, such person threatens or uses force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking or retaining property.

B. Robbery is a Class C offense.

Chapter 20
Forgery and Related Offenses

§ 13-2001. Definitions. In this Chapter, unless the context otherwise requires:

1. "Coin machine" means a coin box, turnstile, vending machine or other mechanical, electrical, or electronic device or receptacle designed to receive a coin or bill of a certain denomination or a token made for such purpose, and in return for the

insertion or deposit thereof, automatically to offer, provide, assist in providing or permit the acquisition or use of some property or service.

2. "Complete written instrument" means a written instrument which purports to be genuine and fully drawn with respect to ever essential feature thereof.

3. "Forged instrument" means a written instrument which has been falsely made, completed or altered.

4. "Incomplete written instrument" means a written instrument which contains some matter by way of content or authentication but which requires additional matter to render it a complete written instrument.

5. "Slug" means an object, article or device which by virtue of its size, shape or any other quality is capable of being inserted, deposited or otherwise used in a coin machine as a fraudulent substitute for a genuine token, lawful coin, or bill of the United States.

6. "To falsely alter a written instrument" means to change, without the permission of anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter or in any other manner, so that the altered instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.

7. "To falsely complete a written instrument" means to transform an incomplete written instrument into a complete one by adding, inserting or changing matter without the permission of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.

8. "To falsely make a written instrument" means to make or draw a complete or incomplete written instrument 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 did not authorize the making or drawing of such written instrument.

9. "Written instrument" means:

(a) Any paper, document or other instrument containing written or printed matter or its equivalent; or

(b) Any token, stamp, seal, badge, trademark of other evidence or symbol of value, right, privilege or identification.

§ 13-2002. Forgery; Classification.

A. A person commits forgery if, with intent to defraud, such person:

1. Falsely makes, completes or alters a written instrument; or

2. Knowingly possesses a forged instrument; or

3. Offers or presents, whether accepted or not, a forged instrument or one which contains false information.

B. Forgery is a Class C offense.

§ 13-2007. Unlawful Use of Slugs; Classification.

A. A person commits unlawful use of slugs if:

1. With intent to defraud the supplier of property or a service sold or offered by means of a coin machine, such person inserts, deposits or otherwise uses a slug in such machine; or

2. Such person makes, possesses, offers for sale or disposes of a slug with intent to enable a person to use it fraudulently in a coin machine.

B. Unlawful use of slugs is a Class C offense.

Chapter 21
Credit Card Fraud

§ 13-2101. Definitions. In this Chapter, unless the context otherwise requires:

1. "Cancelled or revoked credit card" means a credit card which is no longer valid because permission to use it has been suspended, revoked or terminated by the issuer of such credit card by written notice sent by certified or registered mail addressed to the person to whom such credit card was issued at such person's last known address. Proof that the written notice has been deposited as certified or registered matter in the United States mail addressed to the person to whom the credit card was issued at such person's last known address gives rise to an inference that the written notice has been given to the cardholder.

2. "Cardholder" means any person:

(a) Names on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer; or

(b) In possession of a credit card with the consent of the person to whom the credit card was issued.

3. "Credit card" means any instrument or device, whether known as a credit card, credit plate, courtesy card or identification card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, either on credit or in possession or in consideration of an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder, upon a promise to pay in part or in full therefor at a future time, whether or not all or any part of the indebtedness represented by such promise to make deferred payment is secured or unsecured. Credit card includes a debit card or other access device or instrument, other than a check that is signed by the holder or other authorized signatory on the deposit account, that draws funds from a deposit account in order to obtain money, goods, services or anything else of value.

4. "Expired credit card" means a credit card which is no longer valid because the term shown on such credit card has elapsed.

5. "Incomplete credit card" means a credit card upon which part of the matter, other than the signature of the cardholder, which an issuer requires to appear before it can be used by a cardholder, has not been stamped, embossed, imprinted or written.

6. "Issuer" means any business organization or financial institution, or its duly authorized agent, which issues a credit card.

7. "Merchant" means a person who is authorized under a written contract with a participating party to furnish money, goods, services or anything else of value upon presentation of a credit card by a cardholder.

8. "Participating party" means a business organization or financial institution which is obligated or permitted by contract to acquire by electronic transmission or other means from a merchant a sales slip or sales draft or instrument for the payment of money evidencing a credit card transaction and from whom an issuer is obligated or permitted by contract to acquire by electronic transmission or other means such sales slip, sales draft or instrument for the payment of money evidencing a credit card transaction.

9. "Receives" or "receiving" means acquiring possession or control of a credit card or accepting a credit card as security for a loan.

§ 13-2103. Receipt of Anything of Value Obtained By Fraudulent Use of a Credit Card; Classification.

A. A person, being a third party, commits receipt of anything of value obtained by fraudulent use of a credit card by buying or receiving money, goods, services

or any other thing of value obtained in violation of section 13-2105, knowing or believing that it was so obtained.

B. Receipt of anything of value obtained by fraudulent use of a credit card is a Class C offense if the value of the property bought is less than one hundred dollars. If the value of the property bought or received is one hundred dollars or more the offense is a Class B offense. Amounts obtained by fraudulent use of a credit card pursuant to one scheme or course of conduct, whether from one or several persons, may be aggregated in determining the classification of offense.

§ 13-2105. Fraudulent Use of a Credit Card; Classification.

A. A person commits fraudulent use of a credit card if such person:

1. With intent to defraud, uses, for the purposes of obtaining money, goods, services or any other thing of value, a credit card or credit card number obtained or retained in violation of this Chapter or a credit card or credit card number which such person knows is forged, expired, cancelled or revoked; or

2. Obtains money, goods, services or any other thing of value by representing, without the consent of the cardholder, that he is the holder to a specified card or by representing that he is the holder of a credit card and such card has not in fact been issued.

B. Fraudulent use of a credit card is a Class C offense. If the value of all money, goods, services and other things of value obtained in violation of this section exceeds one hundred dollars ($100.00) in any consecutive six-month period the offense is a Class B offense.

§ 13-2107. False Statement as to Financial Condition or Identity; Classification.

A. A person commits false statement as to financial condition or identity if such person makes or causes to be made, either directly or indirectly, any false statement in writing as to a material fact, knowing it to be false, with the intent that it be relied on respecting the identity of that person or of any other person, firm or corporation or the financial condition of that person or of any other person, firm or corporation, for the purpose of procuring the issuance of a credit card.

B. False statement as to financial condition or identity is a Class D offense.

§ 13-2108. Fraud By Person Authorized to Provide Goods or Services; Classification.

A. A person commits fraud by a person authorized to provide goods or services if such person knowingly:

1. Furnishes money, goods, services or any other thing of value upon presentation of a credit card obtained or retained in violation of section 13-2102 or a credit card which such person knows is forged, expired, cancelled or revoked.

2. Fails to furnish money, goods, services or any other thing of value which such person represents in writing to the issuer or a participating party that such person has furnished, and who receives any payment therefor.

B. Except as provided in subsections C and D of this section, fraud by a person authorized to provide goods or services in subsection A, paragraphs 1 and 2, is a Class C offense.

C. If the payment received by the person for all money, goods, services or other things of value furnished in violation of subsection A, paragraph 1, exceeds one hundred dollars ($100.00) in any consecutive six-month period, the offense is a Class B offense.

D. If the difference between the value of all monies, goods, services or any other thing of value actually furnished and the payment or payments received by the person therefor upon such representation in violation of subsection A, paragraph 2, exceeds one hundred dollars ($100.00) in any consecutive six-month period, the offense is a Class B offense.

Chapter 22
Business and Commercial Frauds

§ 13-2201. Definitions. In this Chapter, unless the context otherwise requires:

1. "Adulterated" means varying from the standard of composition or quality prescribed by statute or administrative regulation or, if none, as set by established commercial usage.

2. "Fiduciary" means a trustee, guardian, executor, administrator, receiver or any other person carrying on functions of trust on behalf of another person, corporation or organization.

3. "Financial institution" means a bank, insurance company, credit union, savings and loan association, investment trust or other organization held out to the public as a place of deposit for funds or medium of savings or collective investment.

4. "Insolvent" means that, for any reason, a financial institution is unable to pay its obligations in the ordinary or usual course of business or the present fair salable value of its assets is less than the amount that will be required to pay its probable liabilities on its existing debts as they become absolute and matured.

5. "Mislabeled" means:

(a) Varying from the standard of trust or disclosure in labeling prescribed by statute or administrative regulation or, if none, as set by established commercial usage; or

(b) Represented as being another person's product, though otherwise labeled accurately as to quality and quantity.

6. "Misleading statement" means an offer to sell property or services when the offerer does not intent to sell or provide the advertised property or services:

(a) At a price equal to or lower than the price offered; or

(b) In a quantity sufficient to meet the reasonably expected public demand, unless the quantity available is specifically stated in the advertisement; or

(c) At all.

7. "Security interest" means an interest in personal property or fixtures pursuant to Arizona Revised Statutes, title 47, chapter 9.

§ 13-2202. Deceptive Business Practices; Classification.

A. A person commits deceptive business practices if in the course of engaging in a business, occupation or profession such person recklessly:

1. Uses or possesses for use a false weight or measure or any other device for falsely determining or recording any quality or quantity; or

2. Sells, offers or exposes for sale or delivers less than the represented quantity of any commodity or service; or

3. Takes or attempts to take more than the represented quantity of any goods or service when as buyer such person furnishes the weight or measure; or

4. Sells, offers or exposes for sale adulterated goods or services; or

5. Sells, offers or exposes for sale mislabeled goods or services.

B. Deceptive business practices is a Class C offense.

§ 13-2203. False Advertising; Classification.

A. A person commits false advertising if, in connection with the promotion of the sale of property or services, such person recklessly causes to be made or makes a false or misleading statement in any advertisement.

B. False advertising is a Class C offense.

Chapter 23
Organized Crime and Fraud

§ 13-2301. Definitions.

A. For the purposes of this Chapter:

1. "Creditor" means any person making such extension of credit or any person claiming by, under, or through any person making such an extension of credit.

2. "Debtor" means any person to whom such an extension of credit is made or any person who guarantees the repayment of an extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom an extension is made to repay the same.

3. "Extortionate extension of credit" means any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time such extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person or the reputation or property of any person.

4. "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person or the reputation or property of any person.

5. "Repayment of any extension of credit" means the repayment, satisfaction or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

6. "To collect an extension of credit" means to induce in any way any person to make repayment thereof.

7. "To extend credit" means to make or renew any loan or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

B. For the purposes of this Chapter:

1. "Dealer in property" means a person who buy and sells property as a business.

2. "Stolen property" means property that has been the subject of any unlawful taking.

3. "Traffic" means to sell, transfer, distribute, dispense or otherwise dispose of stolen property to another person, or to buy, receive, possess or obtain control of stolen property, with intent to sell, transfer, distribute, dispense or otherwise dispose of to another person.

C. For the purposes of this Chapter:

1. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal syndicate even though such persons may not know each other's identity, membership in the combination changes from time to time or one or more members may stand in a wholesaler-retailer or other arm's length relationship with others as to activities or dealings between or among themselves in an illicit operation.

2. "Criminal syndicate" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct which violates any one or more provisions of this Title or any felony statute of any state.

D. For the purposes of this Chapter, unless the context otherwise requires:

1. "Control", in relation to an enterprise, means the possession of sufficient means to permit substantial direction over the affairs of an enterprise and, in relation to property, means to acquire or possess.

2. "Enterprise" means any corporation, partnership, association, labor union, or other legal entity or any group of persons associated in fact although not a legal entity.

3. "Financial institution" means any business under the jurisdiction of the state banking department or a banking or securities regulatory agency of the United States or a business under the jurisdiction of the securities division of the corporation commission, the state real estate department or the department of insurance.

5. "Records" means any book, paper, writing, record, computer program or other material.

E. For the purposes of section 13-2316:

1. "Access" means to approach, instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system or computer network.

2. "Computer" means an electronic device which performs logic, arithmetic or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, software or communication facilities which are connected or related to such a device in a system or network.

3. "Computer network" means the interconnection of communication lines with a computer through remote terminals or a complex consisting of two (2) or more interconnected computers.

4. "Computer program" means a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.

5. "Computer software" means a set of computer programs, procedures and associated documentation concerned with the operation of a computer system.

6. "Computer system" means a set of related, connected or unconnected computer equipment, devices and software.

7. "Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card or marketable security or any other written instrument, as defined by section 13-2001(9), which is transferable for value.

8. "Property" means financial instruments, information, including electronically produced data, computer software and programs in either machine or human readable form, and anything of value, tangible or intangible.

9. "Services" includes computer time, data processing and storage functions.

§ 13-2305. Permissible Inferences. In an action for trafficking in stolen property:

1. Proof of possession of property recently stolen, unless satisfactorily explained, may give rise to an inference that the person in possession of the property was aware of the risk that it had been stolen or in some way participated in its theft.

2. Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, may give rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.

3. Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, may give rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.

§ 13-2306. Possession of Altered Property; Classification.

A. A person who is a dealer in property and recklessly possesses property the permanent identifying features of which, including serial numbers or labels, have been removed or in any fashion altered is guilty of a Class C offense.

B. It is a defense to a prosecution under this section that a person has lawfully obtained a special serial number or lawfully possesses the usual indicia of ownership in addition to mere possession or has obtained the consent of the manufacturer of the property.

§ 13-2308. Participating in or Assisting a Criminal Syndicate; Leading or Participating in a Criminal Street Gang.

A. A person commits participating in a criminal syndicate by:

1. Intentionally organizing, managing, directing, supervising or financing a criminal syndicate with the intent to promote or further the criminal objectives of the syndicate; or

2. Knowingly inciting or inducing others to engage in violence or intimidation to promote or further the criminal objectives of a criminal syndicate; or

3. Furnishing advice or direction in the conduct, financing or management of a criminal syndicate's affairs with the intent to promote or further the criminal objectives of a criminal syndicate; or

4. Intentionally promoting or furthering the criminal objectives of a criminal syndicate by inducing or committing any act or omission by a public servant in violation of his official duty; or

5. Hiring, engaging or using a minor for any conduct preparatory to or in completion of any offense in this section.

B. A person shall not be convicted pursuant to subsection A of this section on the basis of accountability as an accomplice unless he participates in violating this section in one of the ways specified.

C. A person commits assisting a criminal syndicate by committing a Class A or B offense under this Title or any felony, whether completed or preparatory, with the intent to promote or further the criminal objectives of a criminal syndicate.

D. Participating in a criminal syndicate is a Class B offense.

H. Use of a common name or common identifying sign or symbol shall be admissible and may be considered in proving the combination of persons or enterprises required by this section.

§ 13-2316. Computer Fraud; Classification.

A. A person commits computer fraud in the first degree by accessing, altering, damaging or destroying without authorization or exceeding authorization of use of any computer, computer system, computer network, or any part of such computer, system or network, with the intent to devise or execute any scheme or artifice to defraud or deceive, or control property or services by means of false or fraudulent pretenses, representations or promises.

B. A person commits computer fraud in the second degree by intentionally and without authorization or by exceeding authorization accessing, altering, damaging or destroying any computer, computer system or computer network or any computer software, program or data contained in such computer, computer system or computer network.

C. Computer fraud is a Class B offense. Computer fraud in the second degree is a Class C offense.

Chapter 24
Obstruction of Public Administration

§ 13-2403. Refusing to Aid a Peace Officer; Classification.

A. A person commits refusing to aid a peace officer if, upon a reasonable command by a person reasonably known to be a peace officer, such person knowingly refuses or fails to aid such peace officer in:

1. Effectuating or securing an arrest; or

2. Preventing the commission by another of any offense.

B. A person who complies with this section by aiding a peace officer shall not be held liable to any person for damages resulting therefrom, provided such person acted reasonably under the circumstances known to him at the time.

C. Refusing to aid a peace officer is a Class D offense.

§ 13-2404. Refusing to Assist in Fire Control; Classification.

A. A person commits refusing to assist in fire control if:

1. Upon a reasonable command by a person reasonably known to be a fireman, such person knowingly refuses to aid in extinguishing a fire or in protecting property at the scene of a fire; or

2. Upon command by a person reasonably known to be a fireman or peace officer, such person knowingly disobeys an order or law relating to the conduct of persons in the vicinity of a fire.

B. In this section, "fireman" means any officer or employee of the tribal or other local fire department, Arizona state forester or his deputies, or any other person vested by law with the duty to extinguish fires.

C. A person who complies with this section by assisting in fire control shall not be held liable to any person for damages resulting therefrom, if such person acted reasonably under the circumstances known to him at the time.

D. Refusing to assist in fire control is a Class D offense.

§ 13-2405. Compounding; Classification.

A. A person commits compounding if such person knowingly accepts or agrees to accept any pecuniary benefit as consideration for:

1. Refraining from seeking prosecution of an offense; or

2. Refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to the offense.

C. Compounding is a Class B offense if the crime compounded is a Class A offense or a felony. If the crime compounded is not a Class A offense or a felony, compounding is a Class D offense.

§ 13-2407. Tampering With a Tribal Public Record; Classification.

A. A person commits tampering with a tribal public record if, with the intent to defraud or deceive, such person knowingly:

1. Makes or completes a written instrument, knowing that it has been falsely made, which purports to be a tribal public record or true copy thereof or alters or makes a false entry in a written instrument which is a tribal public record or a true copy of a tribal public record; or

2. Presents or uses a written instrument which is or purports to be a tribal public record or a copy of such public record, knowing that it has been falsely

made, completed or altered or that a false entry has been made, with intent that it be taken as genuine; or

3. Records, registers or files or offers for recordation, registration or filing in a tribal governmental office or agency a written statement which has been falsely made, completed or altered or in which a false entry has been made or which contains a false statement or false information; or

4. Destroys, mutilates, conceals, removes or otherwise impairs the availability of any tribal public record; or

5. Refuses to deliver a tribal public record in such person's possession upon proper request of a public servant entitled to receive such record for examination or other purposes.

B. In this section "tribal public record" means all official books, papers, written instruments or records created, issued, received or kept by any tribal governmental office or agency or required by law to be kept by others for the information of the government.

C. Tampering with a tribal public record is a Class C offense.

§ 13-2408. Securing The Proceeds of an Offense; Classification.

A. A person commits securing the proceeds of an offense if, with intent to assist another in profiting or benefiting from the commission of an offense, such person aids the person in securing the proceeds of the offense.

B. Securing the proceeds of an offense is a Class B offense if the person assisted committed a Class A or B offense or a felony. Securing the proceeds of an offense is a Class D offense if the person assisted committed a Class C or D offense or a misdemeanor.

§ 13-2409. Obstructing Criminal Investigations or Prosecutions; Classification. A person who knowingly attempts by means of bribery, misrepresentation, intimidation or force or threats of force to obstruct, delay or prevent the communication of information or testimony relating to a violation of any criminal statute to a peace officer, magistrate, judge, prosecutor or grand jury or who knowingly injures another in his person or property on account of the giving by the latter or by any other person of any such information or testimony to a peace officer, magistrate, judge, prosecutor or grand jury is guilty of a Class B offense.

Chapter 25
Escape and Related Offenses

§ 13-2501. Definitions. In this Chapter, unless the context otherwise requires:

1. "Contraband" means any dangerous drug, narcotic drug, marijuana, intoxicating liquor of any kind, deadly weapon, dangerous instrument, explosive or any other article whose use or possession would endanger the safety, security or preservation of order in a correctional facility or of any person therein.

2. "Correctional facility" means any place used for the confinement or control of a person:

(a) Charged with or convicted of an offense; or

(b) Held for extradition; or

(c) Pursuant to an order of court for law enforcement purposes.

Lawful transportation or movement incident to correctional facility confinement pursuant to subdivision (a), (b) or (c) of this paragraph is within the control of a correctional facility. However, for purposes of this Chapter, being within the control of a correctional facility does not include release on parole, probation or by other lawful authority upon condition of subsequent personal appearance at a designated place and time.

3. "Custody" means the imposition of actual or constructive restraint pursuant to an onsite arrest by a tribal peace officer or tribal court order but does not include detention in a correctional facility, juvenile detention center or hospital.

4. "Escape" means departure from custody or from a juvenile secure care facility or an adult correctional facility in which a person is held or detained with knowledge that such departure is unpermitted or failure to return to custody or detention following a temporary leave granted for a specific purpose or for a limited period.

§ 13-2504. Escape; Classification.

A. A person commits escape in the first degree by knowingly escaping or attempting to escape from custody, a juvenile secure care facility or a correctional facility.

B. Escape is a Class B offense and the sentence imposed for a violation of this section shall run consecutively to any sentence of imprisonment for which the defendant was confined.

§ 13-2507. Failure to Appear; Classification.

A. A person commits failure to appear in the first degree if, having been required by law to appear in connection with any Class A or B offense, such person knowingly fails to appear as required, regardless of the disposition of the charge requiring the appearance.

B. Failure to appear in the first degree is a Class B offense.

§ 13-2508. Resisting Arrest; Classification.

A. A person commits resisting arrest by intentionally preventing or attempting to prevent a person reasonably known to him to be a peace officer, acting under color of such peace officer's official authority, from effecting an arrest by:

1. Using or threatening to use physical force against the peace officer or another; or

2. Using any other means creating a substantial risk of causing physical injury to the peace officer or another.

B. Resisting arrest is a Class B offense.

§ 13-2509. Resisting an Order Directing, Regulating or Controlling Motor Vehicle; Classification.

A. A person commits resisting an order directing, regulating or controlling a motor vehicle by knowingly failing to obey an order of a person reasonably known to him to be a peace officer, acting under color of such officer's official authority, directing, regulating or controlling his vehicle.

B. Resisting an order directing, regulating or controlling a motor vehicle is a Class C offense.

§ 13-2510. Hindering Prosecution; Definition. For purposes of section 13-2512 a person renders assistance to another person by knowingly:

1. Harboring or concealing the other person; or

2. Warning the other person of impending discovery, apprehension, prosecution or conviction. This does not apply to a warning given in connection with an effort to bring another into compliance with the law; or

3. Providing the other person with money, transportation, a weapon, a disguise or other similar means of avoiding discovery, apprehension, prosecution or conviction; or

4. Preventing or obstructing by means of force, deception or intimidation anyone from performing an act that might aid in the discovery, apprehension, prosecution or conviction of the other person; or

5. Suppressing by an act of concealment, alteration or destruction any physical evidence that might aid in the discovery, apprehension, prosecution or conviction of the other person; or

6. Concealing the identity of the other person.

§ 13-2512. Hindering Prosecution; Classification.

A. A person commits hindering prosecution in the first degree if, with the intent to hinder the apprehension, prosecution, conviction or punishment of another for any offense under this Code, such person renders assistance to such person.

B. Hindering prosecution is a Class B offense.

Chapter 26
Bribery

§ 13-2601. Definition. In this Chapter, unless the context otherwise requires:

1. "Employee" includes a person employed by an enterprise or an agent or fiduciary of a principal.

2. "Employer" includes an enterprise or principal.

3. "Tribal officer" means a person who holds any position or office in a Tribe, whether by election, appointment or otherwise.

§ 13-2602. Bribery of a Tribal Servant or Tribal Officer; Classification.

A. A person commits bribery of a tribal servant or tribal officer if with corrupt intent:

1. Such person offers, confers or agrees to confer any benefit upon a tribal servant or tribal officer with the intent to influence the tribal servant's or tribal officer's vote, opinion, judgment, exercise of discretion or other action in his official capacity as a tribal servant or tribal officer; or

2. While a tribal servant or tribal officer, such person solicits, accepts or agrees to accept any benefit upon an agreement or understanding that his vote, opinion, judgment, exercise of discretion or other action as a tribal servant or tribal officer may thereby be influenced.

B. It is no defense to a prosecution under this section that a person sought to be influenced was not qualified to act in the desired way because such person had not yet assumed office, lacked jurisdiction or for any other reason.

C. Bribery of a tribal servant or tribal officer is a Class B offense.

§ 13-2606. Offer to Exert Improper Influence on Tribal Officer or Employee for Consideration; Classification. A person who intentionally or knowingly obtains or seeks to obtain any benefit from another person upon a claim or representation that he can or will improperly influence the action of a tribal servant is guilty of a Class C offense.

Chapter 27
Perjury and Related Offenses

§ 13-2701. Definitions. In this Chapter, unless the context otherwise requires:

1. "Material" means that which could have affected the course or outcome of any proceeding or transaction. Whether a statement is material in any given factual situation is a question of law.

2. "Statement" means any representation of fact and includes a representation of opinion, belief or other state of mind where the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

3. "Sworn statement" means any statement knowingly given under oath or affirmation attesting to the truth of what is stated, including a notarized statement whether or not given in connection with an official proceeding.

§ 13-2702. Perjury; Classification.

A. A person commits perjury by making a false sworn statement in regard to a material issue, believing it to be false.

B. Perjury is a Class B offense.

§ 13-2705. Perjury By Inconsistent Statements. When a person has made inconsistent statements under oath, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single charge alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

§ 13-2706. Limitation on Defenses.

A. It is no defense to a prosecution under this Chapter that:

1. The statement was inadmissible under the rules of evidence; or

2. The oath or affirmation was taken or administered in an irregular manner; or

3. The defendant mistakenly believed the false statement to be immaterial.

B. The provisions of law which declare that evidence obtained upon examination of a person as a witness cannot be received against him in a criminal proceeding do not forbid giving such evidence against the person upon any proceedings founded upon a charge of perjury committed in such examination.

§ 13-2707. Proof of Guilt. Proof of guilt beyond a reasonable doubt is sufficient for perjury and it shall not be necessary that proof be made by a particular number of witnesses or by documentary or other type of evidence.

Chapter 28
Interference with Judicial and Other Proceedings

§ 13-2801. Definitions. In this Chapter, unless the context otherwise requires:

1. "Juror" means any person who is a member of any impaneled jury and includes any person who has been drawn or summoned to attend as a prospective juror.

2. "Official proceeding" means a proceeding heard before any legislative, judicial, administrative or other tribal governmental agency or official authorized to hear evidence under oath.

3. "Physical evidence" means any article, object, document, record or other thing of physical substance.

4. "Testimony" means oral or written statements, documents, or any other material that may be offered by a witness in an official proceeding.

§ 13-2802. Influencing a Witness; Classification.

A. A person commits influencing a witness if such person threatens a witness or offers, confers or agrees to confer any benefit upon a witness in any official proceeding or a person he believes may be called as a witness with intent to:

1. Influence the testimony of that person; or

2. Induce that person to avoid legal process summoning him to testify; or

3. Induce that person to absent himself from any official proceeding to which he has been legally summoned.

B. Influencing a witness is a Class B offense.

§ 13-2803. Receiving a Bribe By a Witness; Classification.

A. A witness in an official proceeding or a person who believes he may be called as a witness commits receiving a bribe by a witness if such person knowingly solicits, accepts or agrees to accept any benefit upon an agreement or understanding that:

1. His testimony will thereby be influenced; or

2. He will attempt to avoid legal process summoning him to testify; or

3. He will absent himself from any official proceeding to which he has been legally summoned.

B. Receiving a bribe by a witness is a Class B offense.

§ 13-2804. Tampering With a Witness; Classification.

A. A person commits tampering with a witness if such person knowingly induces a witness in any official proceeding or a person he believes may be called as a witness to:

1. Unlawfully withhold any testimony; or

2. Testify falsely; or

3. Absent himself from any official proceeding to which he has been legally summoned.

B. Tampering with a witness is a Class B offense.

§ 13-2805. Influencing a Juror; Classification.

A. A person commits influencing a juror if such person threatens a juror or offers, confers or agrees to confer a benefit upon a juror with the intent to influence the juror's vote, opinion, decision or other action as a juror.

B. Influencing a juror is a Class B offense.

§ 13-2806. Receiving a Bribe By a Juror; Classification.

A. A juror commits receiving a bribe by a juror if such person knowingly solicits, accepts or agrees to accept any benefit upon an agreement or understanding that his vote, opinion, decision or other action as a juror may be influenced.

B. Receiving a bribe by a juror is a Class B offense.

§ 13-2807. Jury Tampering; Classification.

A. A person commits jury tampering if, with intent to influence a juror's vote, opinion, decision or other action in a case, such person directly or indirectly, communicates with a juror other than as part of the normal proceedings of the case.

B. Jury tampering is a Class B offense.

§ 13-2808. Misconduct By a Juror; Classification.

A. A juror commits misconduct by a juror if, in relation to an action or proceeding pending or about to be brought before him, such person knowingly:

1. Allows an unauthorized communication to be made to him; or

2. Makes a promise or agreement to decide for or against any party to the proceeding other than as part of jury deliberation.

B. Misconduct by a juror is a Class B offense.

§ 13-2809. Tampering With Physical Evidence; Classification.

A. A person commits tampering with physical evidence if, with intent that it be used, introduced, rejected or unavailable in an official proceeding which is then pending or which such person knows is about to be instituted, such person:

1. Destroys, mutilates, alters, conceals or removes physical evidence with the intent to impair its verity or availability; or

2. Knowingly makes, produces or offers any false physical evidence; or

3. Prevents the production of physical evidence by an act of force, intimidation or deception against any person.

B. Inadmissibility of the evidence in question is not a defense.

C. Tampering with physical evidence is a Class B offense.

§ 13-2810. Interfering With Judicial Proceedings; Classification.

A. A person commits interfering with judicial proceedings if such person knowingly:

1. Engages in disorderly, disrespectful or insolent behavior during the session of a court which directly tends to interrupt its proceedings or impairs the respect due to its authority; or

2. Disobeys or resists the lawful order, process or other mandate of a court; or

3. Refuses to be sworn or affirmed as a witness in any court proceeding; or

4. Publishes a false or grossly inaccurate report of a court proceeding; or

5. Refuses to serve as a juror unless exempted by law; or

6. Fails inexcusably to attend a trial at which he has been chosen to serve as a juror.

B. Interfering with judicial proceedings is a Class C offense.

§ 13-2813. Unlawful Disclosure of a Complaint; Classification.

A. A person commits unlawful disclosure of a complaint if, except in the proper discharge of his official duties or as authorized by the court, such person knowingly discloses the fact that a complaint has been found or filed before the accused person is in custody or has been served with a summons.

B. Unlawful disclosure of a complaint is a Class C offense.

Chapter 29
Offenses Against Public Order

§ 13-2901. Definitions. In this Chapter, unless the context otherwise requires:

1. "Marijuana" means all parts of any plant of the genus cannabis, from which the resin has not been extracted, whether growing or not, and the seeds of such plant. Marijuana does not include the mature stalks of such plant, or the sterilized seed of such plant which is incapable of germination.

2. "Public" means affecting or likely to affect a substantial group of persons.

§ 13-2904. Disorderly Conduct; Classification.

A. A person commits disorderly conduct if, with intent to disturb the peace or quiet of any public or private place or person on the Reservation, or with knowledge of doing so, such person:

1. Engages in fighting, violent or seriously disruptive behavior; or

2. Makes unreasonable noise; or

3. Uses abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person; or

4. Makes any protracted commotion, utterance or display with the intent to prevent the transaction of the business of a lawful meeting, gathering or procession; or

5. Refuses to obey a lawful order to disperse issued to maintain public safety in dangerous proximity to a fire, a hazard or any other emergency; or

6. Recklessly handles, displays or discharges a deadly weapon or dangerous instrument.

B. Disorderly conduct is a Class C offense.

Section 13-2904(A) was amended by Resolution R-187-96, enacted December 11, 1996, by adding the following language before the words "the Reservation": "any public or private place or person on". The words "a neighborhood, family or person," following "the Reservation" were deleted.

§ 13-2905. Loitering; Classification.

A. A person commits loitering is such person intentionally:

1. Is present in a public place and in an offensive manner or, in a manner likely to disturb the public peace, solicits another person to engage in any sexual offense; or

2. Is present in a transportation facility and after a reasonable request to cease or unless specifically authorized to do so solicits or engages in any business, trade or commercial transactions involving the sale of merchandise or services; or

3. Is present in a public place to beg; or

4. Is present in a public place, unless specifically authorized by law, to gamble with any cards, dice or other similar gambling devices; or

5. Is present in or about a school, college or university building or grounds after a reasonable request to leave and either does not have any reason or relationship involving custody of or responsibility for a pupil or student or any other specific legitimate reason for being there or does not have written permission to be there from anyone authorized to grant permission.

B. Loitering is a Class D offense.

§ 13-2906. Obstructing a Highway or Other Public Thoroughfare; Classification.

A. A person commits obstructing a highway or other public thoroughfare if, having no legal privilege to do so, such person, alone or with other persons, recklessly interferes with the passage of any highway or public thoroughfare by creating an unreasonable inconvenience or hazard.

B. Obstructing a highway or other public thoroughfare is a Class D offense.

§ 13-2907.01. False Reporting to Law Enforcement Agencies; Classification.

A. It is unlawful for a person to knowingly make to the tribal law enforcement department a false, fraudulent or unfounded report or statement or to knowingly misrepresent a fact for the purpose of interfering with the orderly operation of the law enforcement department or misleading a peace officer.

B. Violation of this section is a Class D offense.

§ 13-2908. Criminal Nuisance; Classification.

A. A person commits criminal nuisance:

1. If, by conduct either unlawful in itself or unreasonable under the circumstances, such person recklessly creates or maintains a condition which endangers the safety or health of others.

2. By knowingly conducting or maintaining any premises, place or resort where persons gather for purposes of engaging in unlawful conduct.

B. Criminal nuisance is a Class C offense.

§ 13-2921. Harassment; Classification; Definition.

A. A person commits harassment if, with intent to harass or with knowledge that the person is harassing another person, the person:

1. Anonymously or otherwise communicates or causes a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means in a manner that harasses.

2. Continues to follow another person in or about a public place for no legitimate purpose after being asked to desist.

3. Repeatedly commits an act that harasses another person.

B. Harassment is a Class D offense.

C. This section does not apply to an otherwise lawful demonstration, assembly or picketing.

D. For the purposes of this section, "harassment" means conduct directed at a specific person which would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person and which serves no legitimate purpose.

Chapter 31
Weapons and Explosives

§ 13-3101. Definitions. In this Chapter, unless the context otherwise requires:

1. "Deadly weapon" means anything designed for lethal use. The term includes a firearm.

2. "Deface" means to remove, alter or destroy the manufacturer's serial number.

3. "Explosive" means any dynamite, nitroglycerine, black powder or other similar explosive material including plastic explosives but does not mean or include ammunition or ammunition components such as primers, percussion caps, smokeless powder, black powder and black powder substitutes used for hand loading purposes.

4. "Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, except that it does not include a firearm in permanently inoperable condition.

5. "Occupied structure" means any building, object, vehicle, watercraft, aircraft or place with sides and a floor, separately securable from any other structure attached to it and used for lodging, business, transportation, recreation or storage in which one or more human beings either is or is likely to be present or so near as to be in equivalent danger at the time the discharge of a firearm occurs. The term includes any dwelling house, whether occupied, unoccupied or vacant.

6. "Prohibited possessor" means any person:

(a) Who has been found to constitute a danger to himself or to others pursuant to court order and whose court ordered treatment has not been terminated by court order.

(b) Who has been convicted within any state of a felony or who has been adjudicated delinquent and whose civil right to possess or carry a gun or firearm has not been restored.

(c) Who is at the time of possession serving a term of imprisonment in any correctional or detention facility.

(d) Who is at the time of possession serving a term of probation, parole, community supervision, work furlough, home arrest or release on any other basis or who is serving a term of probation or parole.

7. "Prohibited weapon" means, but does not include fireworks imported, distributed or used in compliance with tribal law, any propellant, propellant actuated devices or propellant actuated industrial tools which are manufactured, imported or distributed for their intended purposes or a device which is commercially manufactured primarily for the purpose of illumination, any:

(a) Explosive, incendiary or poison gas:

(i) Bomb.

(ii) Grenade.

(iii) Rocket having a propellant charge of more than four ounces.

(iv) Mine; or

(b) Device designed, made or adapted to muffle the report of a firearm; or

(c) Firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

(d) Rifle with a barrel length of less than sixteen inches, or shotgun with a barrel length of less than eighteen inches, or any firearm made from a rifle or shotgun which, as modified, has an overall length of less than twenty-six inches; or

(e) Instrument, including a nunchaku, that consists of two (2) or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire or chain, in the design of a weapon used in connection with the practice of a system of self-defense; or

(f) Breakable container which contains a flammable liquid with a flash point of one hundred fifty degrees Fahrenheit (150°F) or less and has a wick or similar device capable of being ignited; or

(g) Combination of parts or materials designed and intended for use in making or converting a device into an item set forth in subdivision (a) or (f) of this paragraph.

The items as set forth in subdivisions (a), (b), (c) and (d) of this paragraph shall not include any such firearms or devices registered in the national firearms registry and transfer records of the United States treasury department or any firearm which has been classified as a curio or relic by the United States treasury department.

§ 13-3102. Misconduct Involving Weapons; Defenses; Classification; Definitions.

A. A person commits misconduct involving weapons by knowingly:

1. Carrying a deadly weapon without a permit except a pocket knife concealed on his person; or

2. Carrying a deadly weapon without a permit concealed within immediate control of any person in or on a means of transportation; or

3. Manufacturing, possessing, transporting, selling or transferring a prohibited weapon; or

4. Possessing a deadly weapon if such person is a prohibited possessor; or

5. Selling or transferring a deadly weapon to a prohibited possessor; or

6. Defacing a deadly weapon; or

7. Possessing a defaced deadly weapon knowing the deadly weapon was defaced; or

8. Using or possessing a deadly weapon during the commission of any offense included in subchapter 34 of this Chapter; or

9. Discharging a firearm at an occupied structure in order to assist, promote or further the interests of a criminal street gang, a criminal syndicate or a racketeering enterprise; or

10. Unless specifically authorized by law, entering any public establishment or attending any public event and carrying a deadly weapon on his person after a reasonable request by the operator of the establishment or the sponsor of the event or his agent to remove his weapon and place it in the custody of the operator of the establishment or the sponsor of the event; or

11. Unless specifically authorized by law, entering an election polling place on the day of any election carrying a deadly weapon; or

12. Possessing a deadly weapon on school grounds; or

13. Unless specifically authorized by law, entering a commercial nuclear generating station carrying a deadly weapon on his person or within the immediate control of any person.

B. A person commits misconduct involving weapons by supplying, selling or giving possession or control of a firearm to another person if the person knows or has reason to know that the other person would use the firearm in the commission of any Class A offense under this Title.

C. Subsection A, paragraph 1, shall not apply to a person in his dwelling, on his business premises or on real property owned or leased by that person.

D. Subsection A, paragraphs 1, 2, 3, 7, 10, 11, 12 and 13, shall not apply to:

1. A peace officer or any person summoned by any peace officer to assist and while actually assisting in the performance of official duties; or

2. A member of the military forces of the United States or of any state of the United States in the performance of official duties; or

3. A person specifically licensed, authorized or permitted pursuant to a statute of this state or of the United States.

E. Subsection A, paragraphs 3 and 7, shall not apply to:

1. The possessing, transporting, selling or transferring of weapons by a museum as a part of its collection or an educational institution for educational purposes or by an authorized employee of such museum or institution, if:

(a) Such museum or institution is operated by the United States or this state or a political subdivision of this state, or by an

organization described in section 170(c) of title 26 of the United States Code as a recipient of a charitable contribution; and

(b) Reasonable precautions are taken with respect to theft or misuse of such material.

2. The regular and lawful transporting as merchandise; or

3. Acquisition by a person by operation of law such as by gift, devise or descent or in a fiduciary capacity as a recipient of the property or former property of an insolvent, incapacitated or deceased person.

F. Subsection A, paragraph 3, shall not apply to the merchandise of an authorized manufacturer thereof or dealer therein, when such material is intended to be manufactured, possessed, transported, sold or transferred solely for or to a dealer or a regularly constituted or appointed state, county or municipal police department or police officer, or a detention facility, or the military service of this or another state or the United States, or a museum or educational institution or a person specifically licensed or permitted pursuant to federal or state law.

G. Subsection A, paragraph 1, shall not apply to a weapon or weapons carried in a belt holster which holster is wholly or partially visible, or carried in a scabbard or case designed for carrying weapons which scabbard or case is wholly or partially visible or carried in luggage. Subsection A, paragraph 2, of this section shall not apply to a weapon or weapons carried in a case, holster, scabbard, pack or luggage which is carried within a means of transportation or within a storage compartment, trunk or glove compartment of a means of transportation.

H. Subsection A, paragraph 10, shall not apply to shooting ranges or shooting events, hunting areas or similar locations or activities.

I. Subsection A, paragraph 3, shall not apply to a weapon described in section 13-3101, paragraph 7, subdivision (e), if such weapon is possessed for the purposes of preparing for, conducting or participating in lawful exhibitions, demonstrations, contests or athletic events involving the use of such weapon. Subsection A, paragraph 12, of this section shall not apply to a weapon if such weapon is possessed for the purposes of preparing for, conducting or participating in hunter or firearm safety courses.

J. Subsection A, paragraph 12, shall not apply to the possession of a:

1. Firearm which is not loaded and which is carried within a means of transportation under the control of an adult provided that if the adult leaves the means of transportation the firearm shall not be visible from the outside of the means of transportation and the means of transportation shall be locked.

2. Firearm for use on the school grounds in a program approved by a school.

K. Misconduct involving weapons under subsection A, paragraph 9, or subsection B of this section is a Class C offense. Misconduct involving weapons under subsection A, paragraphs 3, 4 or 8, of this section is a Class B offense. Misconduct involving weapons under subsection A, paragraph 12, of this section is a Class C offense unless the violation occurs in connection with conduct which violates the provisions of section 13-2308, subsection A, paragraph 5, in which case the offense is a Class B offense. Misconduct involving weapons under subsection A, paragraphs 5, 6 and 7, of this section is a Class C offense. Misconduct involving weapons under subsection A, paragraphs 1, 2, 10, 11 and 13, of this section is a Class C offense.

L. For purposes of this section:

1. "School" means a public or nonpublic kindergarten program, common school or high school.

2. "School grounds" means in, or on the grounds of, a school.

§ 13-3109. Sale or Gift of Firearm to Minor; Classification.

A. Except as provided in subsection C of this section, a person who sells or gives to a minor, without written consent of the minor's parent or legal guardian, a firearm, ammunition or a toy pistol by which dangerous and explosive substances may be discharged is guilty of a Class B offense.

B. Nothing in this section shall be construed to require reporting sales of firearms, nor shall registration of firearms or firearms sales be required.

C. The temporary transfer of firearms and ammunition by firearms safety instructors, hunter safety instructors, competition coaches or their assistants shall be allowed if the minor's parent or guardian has given consent for the minor to participate in activities such as firearms or hunting safety courses, firearms competition or training. With the consent of the minor's parent or guardian, the temporary transfer of firearms and ammunition by an adult accompanying minors engaged in hunting or formal or informal target shooting activities shall be allowed for those purposes.

§ 13-3111. Minors Prohibited From Carrying or Possessing Firearms; Exceptions; Seizure and Forfeiture; Penalties.

A. Except as provided in subsection B of this section, an unemancipated person who is under eighteen years of age and who is unaccompanied by a parent, grandparent or guardian, or a certified hunter safety instructor or certified firearms safety instructor acting with the consent of the unemancipated person's parent or guardian, shall not knowingly carry or possess on his person, within his immediate control, or in or

on a means of transportation a firearm in any place that is open to the public or on any street or highway or on any private property except private property owned or leased by the minor or the minor's parent, grandparent or guardian.

B. This section does not apply to a person who is fourteen, fifteen, sixteen or seventeen years of age and is any of the following:

1. Engaged in lawful hunting or shooting events or marksmanship practice at established ranges or other areas where the discharge of a firearm is not prohibited.

2. Engaged in lawful transportation of an unloaded firearm for the purpose of lawful hunting.

3. Engaged in lawful transportation of an unloaded firearm between the hours of 5:00 a.m. and 10:00 p.m. for the purpose of shooting events or marksmanship practice at established ranges or other areas where the discharge of a firearm is not prohibited.

C. If the minor is not exempt under subsection B of this section and is in possession of a firearm, a peace officer shall seize the firearm at the time the violation occurs.

D. A person who violates subsection A of this section is a delinquent child and shall be subject to the following penalties:

1. For an offense involving an unloaded firearm, a fine of not more than two hundred fifty dollars ($250.00).

2. For an offense involving a loaded firearm, a fine of not more than five hundred dollars ($500.00).

3.1. For an offense involving a loaded or unloaded firearm, if the person possessed the firearm while the person was the driver or an occupant of a motor vehicle, a fine of not more than five hundred dollars ($500.00) and the Trial Division shall order, pursuant to the Tribe's exclusion power, that the child not operate a motor vehicle within the Reservation for one (1) year, notwithstanding the child possessing a valid driver's license issued by any state and notwithstanding that the child may be a member of the Tribe. If the Trial Division finds that no other means of transportation is available, the driving privileges of the child may be restricted to travel between the child's home, school and place of employment during specified periods of time according to the child's school and employment schedule.

F. Firearms seized pursuant to subsection C of this section shall be held by the law enforcement agency responsible for the seizure until the charges have been adjudicated or disposed of otherwise. Upon adjudication of a person for a violation of

this section, the Trial Division shall order the firearm forfeited. However, the law enforcement agency shall return the firearm to the lawful owner if the identity of that person is known.

G. If the Trial Division finds that the parent or guardian of a minor found responsible for violating this section knew or reasonably should have known of the minor's unlawful conduct and made no effort to prohibit it, the parent or guardian is jointly and severally responsible for any fine imposed pursuant to this section or for any civil actual damages resulting from the unlawful use of the firearm by the minor.

H. This section is supplemental to any other law imposing a criminal penalty for the use or exhibition of a deadly weapon. A minor who violates this section may be prosecuted and convicted for any other criminal conduct involving the use or exhibition of the deadly weapon.

§ 13-3115. Forensics Firearms Identification System. The tribal department of public safety is authorized to establish and maintain a forensics firearms identification system to provide investigative information on criminal street gangs and the unlawful use of firearms in cooperation with state and local law enforcement agencies.

Chapter 32
Prostitution

§ 13-3211. Definitions. For the purposes of this Chapter, unless the context otherwise requires:

5. "Prostitution" means engaging in or agreeing or offering to engage in sexual conduct with another person under a fee arrangement with that person or any other person.

6. "Prostitution enterprise" means any corporation, partnership, association or other legal entity or any group of individuals associated in fact although not a legal entity engaged in providing prostitution services.

7. "Sadomasochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

8. "Sexual conduct" means sexual contact, sexual intercourse, oral sexual contact or sadomasochistic abuse.

9. "Sexual contact" means any direct or indirect fondling or manipulating of any part of the genitals, anus or female breast.

10. "Sexual intercourse" means penetration into the penis, vulva or anus by any part of the body or by any object.

§ 13-3214. Prostitution; Classification.

A. A person who knowingly engages in prostitution is guilty of a Class C offense.

Chapter 33
Gambling

§ 13-3301.1 Tribal Gaming Offenses; Classification.

A. A person commits a tribal gaming offense if such person commits any act prohibited under section 6.2 of the Gaming Code of the Quechan Indian Tribe (enacted Sept. 15, 1994; amended Jan. 3, 1996).

B. Every gaming offense is a Class B offense.

Chapter 34
Drug Offenses

§ 13-3401. Definitions. In this Chapter, unless the context otherwise requires:

1. "Administer" means to apply, inject or facilitate the inhalation or ingestion of a substance to the body of a person.

4. "Cannabis" means the following substances under whatever names they may be designated:

(a) The resin extracted from any part of a plant of the genus cannabis, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or its resin. Cannabis does not include oil or cake made from the seeds of such plant, any fiber, compound, manufacture, salt, derivative, mixture or preparation of the mature stalks of such plant except the resin extracted from the stalks or any fiber, oil or cake or the sterilized seed of such plant which is incapable of germination.

(b) Every compound, manufacture, salt, derivative, mixture or preparation of such resin or tetrahydrocannabinol.

5. "Coca leaves" means cocaine, its optical isomers and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of

coca leaves which do not contain cocaine, ecgonine or substances from which cocaine or ecgonine may be synthesized or made.

7. "Deliver" means the actual, constructive or attempted exchange from one person to another, whether or not there is an agency relationship.

8. "Director" means the director of the department of health services.

9. "Dispense" means distribute, leave with, give away, dispose of or deliver.

12. "Ketobemidone" means any substance identified chemically as (4—(3-hydroxyphenyl)—1-methyl-4-piperidylethyl ketone hydrochloride), or any salt of such substance, by whatever trade name designated.

13. "Licensed" means authorized by the laws of this state to do certain things.

14. "Manufacture" means produce, prepare, propagate, compound, mix or process, directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. Manufacture includes any packaging or repackaging or labeling or relabeling of containers. Manufacture does not include any producing, preparing, propagating, compounding, mixing, processing, packaging or labeling done in conformity with applicable state and local laws and rules by a licensed practitioner incident to and in the course of his licensed practice.

15. "Manufacturer" means a person who manufactures a narcotic or dangerous drug or other substance controlled by this Chapter.

16. "Marijuana" means all parts of any plant of the genus cannabis, from which the resin has not been extracted, whether growing or not, and the seeds of such plant. Marijuana does not include the mature stalks of such plant or the sterilized seed of such plant which is incapable of germination.

17. "Narcotic drugs" are defined as "narcotic drugs" as defined by Ariz. Rev. Stat. section 13-3401(17) in effect on the date the offense was committed.

20. "Pharmacy" means a licensed business where drugs are compounded or dispensed by a licensed pharmacist.

21. "Practitioner" means a person licensed to prescribe and administer drugs.

26. "Sale" or "sell" means an exchange for anything of value or advantage, present or prospective.

27. "Scientific purpose" means research, teaching or chemical analysis.

28. "Threshold amount" is defined as "threshold amount" as defined by Ariz. Rev. Stat. § 13-3401(28) in effect on the date the offense was committed.

29. "Transfer" means furnish, deliver or give away.

31. "Weight" unless otherwise specified includes the entire weight of any mixture or substance that contains a detectable amount of an unlawful substance. If a mixture or substance contains more than one unlawful substance, the weight of the entire mixture or substance is assigned to the unlawful substance that results in the greater offense. If a mixture or substance contains lysergic acid diethylamide, the offense that results from the unlawful substance shall be based on the greater offense as determined by the entire weight of the mixture or substance or the number of blotter dosage units. For the purposes of this section, a mixture means any combination of substances from which the unlawful substance cannot be removed without a chemical process.

32. "Wholesaler" means a person who in the usual course of business lawfully supplies narcotic or dangerous drugs that he himself has not produced or prepared, but not on prescriptions.

This Section approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Section is similar to the section of the same number in the Arizona Revised Statutes Annotated that was in effect at the time of enactment of this Code.

§ 13-3403. Possession and Sale of a Vapor-Releasing Substance Containing a Toxic Substance; Regulation of Sale; Exceptions; Classification.

A. A person shall not knowingly:

1. Breathe, inhale or drink a vapor-releasing substance containing a toxic substance.

2. Sell, transfer or offer to sell or transfer a vapor-releasing substance containing a toxic substance to a person under eighteen (18) years of age.

3. Sell, transfer or offer to sell or transfer a vapor-releasing substance containing a toxic substance if such person is not, at the time of sale, transfer or offer, employed by or engaged in operating a licensed commercial establishment at a fixed location regularly offering such substance for sale and such sale, transfer or offer is made in the course of employment or operation.

B. A person making a sale or transfer of a vapor-releasing glue containing a toxic substance shall require identification of the purchaser and shall record:

1. The name of the glue.

2. The date and hour of delivery.

3. The intended use of the glue.

4. The signature and address of the purchaser.

5. The signature of the seller or deliverer.

Such record shall be kept for three (3) years and be available to board inspectors and peace officers.

C. The operator of a commercial establishment shall keep all vapor-releasing glue containing a toxic substance in a place that is unavailable to customers without the assistance of the operator or an employee of the establishment.

D. The operator of a commercial establishment selling vapor-releasing paints and varnishes containing a toxic substance dispensed by the use of any aerosol spray device shall conspicuously display an easily legible sign of not less than eleven by fourteen inches which states: "Warning: inhalation of vapors can be dangerous".

E. This section is not applicable to the transfer of a vapor-releasing substance containing a toxic substance from a parent or guardian to his child or ward, or the sale or transfer made for manufacturing or industrial purposes.

F. Subsection A, paragraphs 2 and 3, and subsections B and C of this section do not apply to substances certified by any state law as containing an additive which inhibits inhalation or induces sneezing.

G. A person who violates any provision of this section is guilty of a Class C offense.

Most of this Section is similar to the section of the same number in the Arizona Revised Statutes Annotated that was in effect at the time of enactment of this Code. However, subsection G eliminates the statement allowing the court to defer prosecution on this offense because the Trial Division or Juvenile Court possesses that discretion anyway.

§ 13-3412. Exceptions and Exemptions; Burden of Proof; Privileged Communications.

A. The provisions of section 13-3403 do not apply to:

1. Manufacturers, wholesalers, pharmacies and pharmacists under the provisions of Arizona Revised Statutes sections 32-1921 and 32-1961.

2. Medical practitioners, pharmacies and pharmacists while acting in the course of their professional practice, in good faith and in accordance with generally accepted medical standards.

3. Persons who lawfully acquire and use such drugs only for scientific purposes.

4. Officer and employees of the United States, this state or a political subdivision of the United States or this state, while acting in the course of their official duties.

5. An employee or agent of a person described in paragraphs 1 through 4 of this subsection, and a registered nurse or medical technician under the supervision of a medical practitioner, while such employee, agent, nurse or technician is acting in the course of professional practice or employment, and not on his own account.

6. A common or contract carrier or warehouseman, or an employee of such carrier or warehouseman, whose possession of such drugs is in the usual course of business or employment.

7. Persons lawfully in possession or control of controlled substances.

8. Persons who sell any nonnarcotic substance that under federal law may lawfully be sold over the counter without a prescription.

B. In any complaint and in any action or proceeding brought for the enforcement of any provision of this Chapter the burden of proof of any such exception, excuse, defense or exemption is on the defendant.

C. In addition to other exceptions to the physician-patient privilege, information communicated to a physician in an effort to procure unlawfully a prescription-only, dangerous or narcotic drug, or to procure unlawfully the administration of such drug, is not a privileged communication.

§ 13-3413. Forfeiture and Disposition of Drugs and Evidence.

A. The following items used or intended for use in violation of this Chapter are subject to seizure and forfeiture:

1. Property, equipment, containers, chemicals, materials, money, books, records, research products, formulas, microfilm, tapes and data.

2. Vapor-releasing substances containing a toxic substance.

C. Peyote, dangerous drugs, prescription-only drugs, marijuana, narcotic drugs and plants from which such drugs may be derived which are seized in connection with any violation of this Chapter or which come into the possession of a law enforcement agency are summarily forfeited and subject to destruction by the law enforcement agency.

§ 13-3414. Notice of Conviction to be Sent to Licensing Board; Suspension or Revocation of License or Registration. On the conviction of a person of an offense in this Chapter, a copy of the judgment and sentence, and of the opinion of the Trial Division, if any opinion is filed, shall be sent by the Tribal Court Clerk to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice a profession or to carry on a business.

§ 13-3415. Possession, Manufacture, Delivery and Advertisement of Drug Paraphernalia; Definitions; Violation; Classification; Forfeiture; Factors.

A. It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a drug in violation of this Chapter. Any person who violates this subsection is guilty of a Class B offense.

B. It is unlawful for any person to deliver, possess with intent to deliver or manufacture with intent to deliver drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a drug in violation of this Chapter. Any person who violates this subsection is guilty of a Class B offense.

C. It is unlawful for a person to place in a newspaper, magazine, handbill or other publication any advertisement knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a Class B offense.

D. All drug paraphernalia is subject to summary seizure and forfeiture.

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

1. Statements by an owner or by anyone in control of the object concerning its use.

2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any tribal, federal or state law relating to any drug.

3. The proximity of the object, in time and space, to a direct violation of this Chapter.

4. The proximity of the object to drugs.

5. The existence of any residue of drugs on the object.

6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this Chapter.

7. Instructions, oral or written, provided with the object concerning its use.

8. Descriptive materials accompanying the object which explain or depict its use.

9. National and local advertising concerning its use.

10. The manner in which the object is displayed for sale.

11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

12. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise.

13. The existence and scope of legitimate uses for the object in the community.

14. Expert testimony concerning its use.

F. In this section, unless the context otherwise requires:

1. "Drug" means any narcotic drug, dangerous drug, marijuana or peyote.

2. "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a drug in violation of this Chapter. It includes:

(a) Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a drug or from which a drug can be derived.

(b) Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing drugs.

(c) Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a drug.

(d) Testing equipment used, intended for use or designed for use in identifying or analyzing the strength, effectiveness or purity of drugs.

(e) Scales and balances used, intended for use or designed for use in weighing or measuring drugs.

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting drugs.

(g) Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.

(h) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding drugs.

(i) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of drugs.

(j) Containers and other objects used, intended for use or designed for use in storing or concealing drugs.

(k) Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting drugs into the human body.

(l) 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.

(ix) Electric pipes.

(x) Air-driven pipes.

(xi) Chillums.

(xii) Bongs.

(xiii) Ice pipes or chillers.

Chapter 35A
Alcohol Offenses

§ 13-4244. Alcohol Offenses; Classification.

It shall be a criminal offense:

7. For any retail licensee to purchase spirituous liquors from any person other than a solicitor or salesman of a wholesaler licensed by the Tribe, the State of Arizona, or the State of California.

9. Except as may be provided in Title 12 of the Quechan Law and Order Code (Alcohol Regulation), for a licensee or other person to sell, furnish, dispose of or give, or cause to be sold, furnished, disposed of or given, to a person under the legal drinking age, or for a person under the legal drinking age to buy, receive, have in possession or consume, spirituous liquor. The provisions of this paragraph shall not prohibit the employment by an off-sale retailer of persons who are at least sixteen years of age to check out, if supervised by a person on the premises who is at least nineteen years of age, package or carry merchandise, including spirituous liquor, in unbroken packages,.for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor.

14. For a licensee or other person to serve, sell or furnish spirituous liquor to a disorderly or obviously intoxicated person, or for a licensee or employee of the licensee to allow or permit a disorderly or obviously intoxicated person to come into or remain on or about the premises, except that a licensee or an employee of the licensee may allow an obviously intoxicated person to remain on the premises for a period of time of not to exceed thirty minutes after the state of obvious intoxication is known or should be known to the licensee in order that a nonintoxicated person may transport the obviously intoxicated person from the premises. For purposes of this section, "obviously intoxicated" means inebriated to the extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person.

16. For a licensee or employee to knowingly permit any person on or about the licensed premises to give or furnish any spirituous liquor to any person under the age of twenty-one or knowingly permit any person under the age of twenty-one to have in the person's possession spirituous liquor on the licensed premises.

20. For a person to consume spirituous liquor in a public place, thoroughfare or gathering. The license of a licensee permitting a violation of this paragraph on the premises shall be subject to revocation. This paragraph does not apply to the sale of spirituous liquors on the premises of and by an on-sale retail licensee. This paragraph also does not apply to a person consuming beer from a broken package in a public recreation area or on private property with permission of the owner or lessor or on the walkways surrounding such private property.

21. For a person to have possession of or to transport spirituous liquor which is manufactured in a distillery, winery, brewery or rectifying plant contrary to the laws of the United States, the State of Arizona, the State of California, or the Quechan Tribe. Any property used in transporting such spirituous liquor shall be forfeited to the Tribe and shall be seized and disposed of as provided in tribal law.

22. For a person to operate a motor vehicle on any highway while consuming spirituous liquor.

25. For a licensee or employee to knowingly permit the unlawful possession, use, sale or offer for sale of narcotics, dangerous drugs or marijuana on the premises.

26. For a licensee or employee to knowingly permit prostitution or the solicitation of prostitution on the premises.

27. For a licensee or employee to knowingly permit unlawful gambling on the premises.

28. For a licensee or employee to knowingly permit trafficking or attempted trafficking in stolen property on the premises.

30. For any person other than a peace officer or the licensee or an employee of the licensee acting with the permission of the licensee to be in possession of a firearm while on the licensed premises of an on-sale retail establishment knowing such possession is prohibited. This paragraph shall not be construed to include a situation in which a person is on licensed premises for a limited time in order to seek emergency aid and such person does not buy, receive, consume, or possess spirituous liquor. This paragraph shall not apply to hotel or motel guest room accommodations nor to the exhibition or display of a firearm in conjunction with a meeting, show, class or similar event.

31. For a licensee or employee to knowingly permit a person in possession of a firearm other than a peace officer or the licensee or an employee of the licensee acting with the permission of the licensee to remain on the licensed premises or to serve, sell, or furnish spirituous liquor to a person in possession of a firearm while on the licensed premises of an on-sale retail establishment. This paragraph shall not apply to hotel or motel guest room accommodations nor to the exhibition or display of a firearm in conjunction with a meeting, show, class or similar event. It shall be a defense to action under this paragraph if the licensee or employee requested assistance of a peace officer to remove such person.

33. For a person who is obviously intoxicated to buy or attempt to buy spirituous liquor from a licensee or employee of a licensee or to consume spirituous liquor on the licensed premises.

34. For a person under the age of twenty-one years to drive or be in physical control of a motor vehicle while there is any spirituous liquor in the person's body.

35. For a person under the age of twenty-one years to operate or be in physical control of a motorized watercraft that is underway while there is any spirituous liquor in the person's body.

36. For a licensee, manager, employee, or controlling person to purposely induce a voter, by means of alcohol, to vote or abstain from voting for or against a particular candidate or issue on an election day.

37. For a licensee to fail to report an occurrence of an act of violence to either the department or a law enforcement agency.

B. Any violation of § 13-4244.A is a Class C offense.

Subchapter 35A was approved by the Quechan Indian Tribe, Resolution R-187-96, dated December 11, 1996. Section § 13-4244.A is similar to § 4-244 in the Arizona Revised Statutes Annotated that was in effect at the time of enactment of this Code, in that it makes certain acts that would violate A.R.S.

§ 4-244--primarily by those consuming alcohol--crimes under Quechan tribal law. The provisions of A.R.S. § 4-244 that are retained and adopted into the Quechan Law and Order Code bear the same paragraph numbers they have in § 2-244.

Other acts that would violate A.R.S. § 4-244--primarily by those retailers selling alcohol--are not crimes under Quechan tribal law. Such acts are dealt with under the Tribe's alcohol regulation ordinance, to be codified in Title 12 (Alcohol Regulation) of the Quechan Law and Order Code.

The classification of the crimes in § 13-4244.B is made independent of Arizona law and is based on Quechan tribal law, culture and tradition.

This section is intended to supplement, not supersede, Quechan Tribal Council Ordinance No. 66-1, adopted December 20, 1966, approved by the Secretary of the Interior February 16, 1967. 32 Fed. Reg. 2982.

Ordinance 66-1 authorizes the Tribe and other persons, including corporations, partnerships, associates, and natural persons, to introduce, store, sell, and possess alcoholic beverages within the Fort Yuma Indian Reservation. Ordinance 66-1 allows the Tribal Council to authorize the Tribe to introduce, store, sell and possess alcoholic beverages on the Fort Yuma Reservation without further steps.

However, the introduction, storage, sale and possession of alcoholic beverages on the Fort Yuma Reservation by persons other than the Tribe must be specifically approved by the Tribal Council, and the tribal membership must authorize, in a referendum election, the Tribal Council's grant of such approval. Ordinance 66-1 specifically exempts Tribal Council approvals "for commercial purposes on Tribal lands specifically designated by the Quechan Tribal Council" from the membership authorization requirement.

Chapter 36
Family Offenses

§ 13-3612. Definitions; Contributing to Dependency or Delinquency. For the purposes of Chapter 36, unless the context otherwise requires:

1. "Delinquency" means any act which tends to debase or injure the morals, health or welfare of a child.

2. "Delinquent person" includes any person under the age of eighteen years who violates a law of the Tribe.

3. "Dependent person" means a person under the age of eighteen years:

(a) Who is found begging, receiving or gathering alms, whether actually begging or under the pretext of selling or offering anything for sale.

(b) Who is found in a street, road or public place with the intent of begging, gathering or receiving alms.

(c) Who is a vagrant.

(d) Who is found wandering and not having a home, or a settled place of abode, or a guardian or any visible means of subsistence.

(e) Who has no parent or guardian wiling to exercise, or capable of exercising, proper parental control over him.

(f) Who is destitute.

(g) Whose home, by reason of neglect, cruelty or depravity of his parents, or either of them, or on the part of his guardian, or on the part of the person in whose custody or care he may be, in an unfit place for such person.

(h) Who frequents the company of reputed criminals, vagrants or prostitutes.

(i) Who is found living or being in a house of prostitution or assignation.

(j) Who habitually visits, without parent or guardian, a saloon, or place where spirituous, vinous or malt liquors are sold, bartered or given away.

(k) Who persistently refuses to obey the reasonable orders or directions of his parent or guardian.

(l) Who is incorrigible, that is, beyond the control and power of his parents, guardian or custodian by reason of the vicious conduct or nature of the person.

(m) Whose father or mother is dead, or has abandoned the family, or is an habitual drunkard, or whose father or mother does not provide for such person, and it appears that such person is destitute of a suitable home or adequate means of obtaining an honest living, or who is in danger of being brought up to lead an idle, dissolute and immoral life, or when both parents are dead, or the mother or father, if living, is unable to provide proper support and care of such person.

(n) Who, habitually uses intoxicating liquor as a beverage, or habitually smokes cigarettes, or uses opium, cocaine, morphine or other similar drugs without direction of a competent physician.

(o) Who from any cause is in danger of growing up to lead an idle, dissolute or immoral life.

This Section approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Section is similar to the section of the same number of the Arizona Revised Statutes Annotated that was in effect at the time of enactment of this Code.

§ 13-3613. Contributing to Delinquency and Dependency; Classification; Procedure.

A. A person who by any act, causes, encourages or contributes to the dependency or delinquency of a child, as defined by section 13-3612, or who for any cause is responsible therefor is guilty of a Class C offense.

B. The procedure and prosecution shall be the same as in other criminal cases.

C. When the charge concerns the dependency of a child or children, the offense for convenience may be termed contributory dependency, and when the charge concerns the delinquency of a child or children, the offense for convenience may be termed contributory delinquency.

This Section approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Section is similar to the section of the same number in the Arizona Revised Statutes Annotated that was in effect at the time of enactment of this Code.

§ 13-3614. Proof of Guilt. In order to find a person guilty of violating the provisions of section 13-3613, it is not necessary to prove that the child has actually become dependent or delinquent, if it appears from the evidence that through any act of neglect or omission of duty, or by any improper act or conduct on the part of such person the dependency or delinquency of a child may have been caused or merely encouraged.

This Section approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Section is similar to the section of the same number in the Arizona Revised Statutes Annotated that was in effect at the time of enactment of this Code.

§ 13-3622. Furnishing of Tobacco to Minor; Minor Accepting or Receiving Tobacco; Classification. A person who knowingly sells, gives or furnishes cigars, cigarettes or cigarette papers, smoking or chewing tobacco, to a minor, and a minor who buys, or has in his possession or knowingly accepts or receives from any person, cigars, cigarettes or cigarette papers, smoking or chewing tobacco of any kind, is guilty of a Class D offense.

This Section approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Section is similar to the section of the same number in the Arizona Revised Statutes Annotated that was in effect at the time of enactment of this Code.

Chapter 38
Miscellaneous

Subchapter 1
Prevention of Offenses

§ 13-3801. Preventing Offenses; Aiding Officer.

A. Public offenses may be prevented by intervention of peace officers as follows:

1. By requiring security to keep the peace.

2. Forming a police detailing cities and towns and requiring their attendance in exposed places.

3. Suppressing riots.

B. When peace officers are authorized to act in preventing public offenses, other persons, who, by their command, act in their aid, are justified in so doing.

This Section approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Section is similar to the section of the same number in the Arizona Revised Statutes Annotated that was in effect at the time of enactment of this Code.

Subchapter 4
Close Pursuit

§ 13-3831. Definitions. In this subchapter, unless the context otherwise requires:

1. "State" includes the District of Columbia.

2. "Close pursuit" does not necessarily imply instant pursuit, but pursuit without unreasonable delay, and includes:

(a) Close pursuit as defined by the common law.

(b) Pursuit of a person who has committed a felony, or who is reasonably suspected of having committed a felony.

(c) Pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed.

§ 13-3832. Authority of Peace Officer Entering Reservation in Close Pursuit. A member of a duly organized state, county or municipal law enforcement agency of a state

who enters the Reservation in close pursuit and continues within the Reservation in close pursuit of a person in order to arrest him on the ground that he is believed to have committed a felony in such other state, shall have the same authority to arrest and hold the person in custody as has a member of the duly organized state, county or municipal law enforcement agency of the state to arrest and hold in custody a person on the ground that he is believed to have committed a felony in the state.

§ 13-3833. Arrest and Hearing; Duty of Arresting Officer and Tribal Court. If an arrest is made within the exterior boundaries of the Reservation by an officer of another state in accordance with the provisions of section 13-3832, he shall without unnecessary delay take the person arrested before the Trial Division or other proper authority, which shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the Trial Division or other proper authority determines that the arrest was lawful it shall commit the person arrested to await for a reasonable time for the issuance of an extradition warrant by the governor of the state. If the Trial Division determines that the arrest was unlawful he shall discharge the person arrested.

§ 13-3834. Effect of Arrest. Section 13-3832 shall not be construed to make unlawful any arrest within the Reservation which would otherwise be lawful.

Subchapter 5
Uniform Criminal Extradition Act

§ 13-3841. Definitions. In this subchapter, unless the context otherwise requires:

1. "Governor" includes any person performing the functions of governor by authority of the law of any state.

2. "Executive authority" includes the governor, and any person performing the functions of governor in any state.

3. "State" means a state or territory, organized or unorganized, of the United States.

§ 13-3842. Fugitives From Justice; Duty of President. Subject to the provisions of this subchapter, the provisions of the constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the President of the Tribe to have arrested and delivered up to the executive authority of any state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found within the exterior boundaries of the Reservation and who otherwise would not be subject to the jurisdiction of the state.

§ 13-3843. Form of Demand.

A. No demand for the extradition of a person charged with crime in any state shall be recognized by the President of the Tribe unless in writing and accompanied by a

copy of an indictment found or by an information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a judge or magistrate there.

B. The indictment, information, or affidavit made before the judge or magistrate must substantially charge the person demanded with having committed a crime under the law of that state, and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth.

§ 13-3844. President May Investigate Case. When a demand shall be made upon the President by the executive authority of a state for the surrender of a person so charged with crime, the President may call upon the prosecuting attorney to investigate or assist in investigating the demand, to report to the President the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

§ 13-3845. Extradition Documents; Contents.

A. The President shall not issue a warrant of extradition unless the documents presented by the executive authority making the demand show that:

1. Except in cases arising under section 13-3846, the accused was present in the demanding state at the time of the commission of the alleged crime, and thereafter fled from the state;

2. The accused is now within the exterior boundaries of the Reservation; and

3. The accused is lawfully charged by indictment found or by information filed by a prosecuting officer and supported by affidavit to the facts, or by affidavit made before a judge or magistrate in that state, with having committed a crime under the laws of that state, or that he has been convicted of a crime in that state and has escaped from confinement or broken his parole.

B. In addition to the information required by subsection A of this section, the President shall not issue a warrant of extradition unless the documents presented by the executive authority making the demand include:

1. A photograph and photo affidavit identifying the accused as the fugitive charged with the offense; or

2. Fingerprints certified by the issuing authority that can be used to identify the accused as the fugitive charged with the offense.

§ 13-3846. Extradition of Persons Not Present in Demanding State at Time Of Commission of Crime. The President may also surrender, on demand of the executive authority of any other state, any person within the exterior boundaries of the Reservation

charged in such other state in the manner provided in section 13-3845 with committing an act within the exterior boundaries of the Reservation or in a second state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this subchapter not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

§ 13-3847. Issue of President's Warrant of Arrest; its Recital. If the President decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the tribal seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

§ 13-3848. Manner and Place of Execution. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the Reservation and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this subchapter, to the duly authorized agent of the demanding state.

§ 13-3849. Authority of Arresting Officer. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

§ 13-3850. Duty of Arresting Officer; Application for Writ of Habeas Corpus; Notice. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he has been informed of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand legal counsel; and if the prisoner, or counsel shall state the desire to test the legality of his arrest, the prisoner shall be taken forthwith before the Trial Division who shall fix a reasonable time to be allowed the prisoner within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting attorney and to the said agent of the demanding state.

§ 13-3851. Noncompliance With Preceding Section; Classification. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the President's warrant in disobedience to section 13-3850, shall be guilty of a Class D offense.

§ 13-3852. Confinement in Jail When Necessary. The officer or persons executing the President's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the tribal jail; and the keeper of such jail must receive and safely keep the prisoner until the officer or

person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

§ 13-3853. Arrest Prior to Requisition. When any person within the exterior boundaries of the Reservation shall be charged on the oath of any credible person before a judge of the Tribal Court with the commission of any crime in any state, and, except in cases arising under section 13-3846, with having fled from justice, or whenever complaint shall have been made before a judge of the Tribal Court setting forth on the affidavit of any credible person in a state that a crime has been committed in that state and that the accused has been charged in that state with the commission of the crime, and except in cases arising under section 13-3846, has fled therefrom and is believed to be within the exterior boundaries of the Reservation shall issue a warrant directed to tribal peace officers to apprehend the person charged, wherever he may be found within the exterior boundaries of the Reservation, and bring him before the Tribal Court to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

§ 13-3854. Arrest Without A Warrant. The arrest of a person may be lawfully made also by any peace officer or a private citizen without a warrant upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one (1) year, but when so arrested the accused must be taken before the Trial Division with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in section 13-3853, and thereafter his answer shall be heard as if he had been arrested on a warrant.

§ 13-3855. Commitment to Await Requisition; Bail. If from the examination before the Trial Division it appears that the person held is the person charged with having committed the crime alleged and that he probably committed the crime and, except in cases arising under section 13-3846, that he has fled from justice, the Trial Division must commit him to jail by a complaint reciting the accusation for such a time specified in the complaint, not exceeding thirty days, as will enable the arrest of the accused to be made under a warrant of the President on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused is legally discharged.

§ 13-3857. If No Arrest Made on President's Warrant Before the Time Specified. If the accused is not arrested under warrant of the President by the expiration of the time specified in the complaint, bond or undertaking, the Tribal Court may discharge him or may commit him to a further day, not to exceed sixty (60) days, and at the expiration of the second period of commitment, the Trial Division may either discharge him, or may require him to appear and surrender himself at another day.

§ 13-3859. Persons Under Criminal Prosecution by the Tribe at Time of Requisition. If a criminal prosecution has been instituted against such person under the laws of the Tribe and is still pending, the President, at his discretion, either may surrender him on

demand of the executive authority of a state or may hold him until he has been tried and discharged or convicted and punished on the Reservation.

§ 13-3860. Guilt or Innocence of Accused; When Inquired Into. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the President or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as provided by this subchapter shall have been presented to the President, except as it may be involved in identifying the person held as the person charged with the crime.

§ 13-3861. President May Recall Warrant or Issue Alias. The President may recall his warrant of arrest or may issue another warrant whenever he deems proper.

§ 13-3862. Fugitives From the Reservation; Duty of President. Whenever the President shall demand a person charged with crime under tribal law from the executive authority of a state or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of the Tribe to some agent, commanding him to receive the person so charged if delivered to him and convey him to the tribal prosecuting attorney.

§ 13-3863. Tribal Prosecuting Attorney's Application for Issuance of Requisition; Contents. When the return to the Reservation of a person charged with crime within the exterior boundaries of the Reservation is required, the tribal prosecuting attorney shall present to the President his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, and the state in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the tribal prosecuting attorney, the ends of justice require the arrest and return of the accused to the Reservation for trial and that the proceeding is not instituted to enforce a private claim. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two (2) certified copies of the information and affidavit filed stating the offense with which the accused is charged. The tribal prosecuting attorney may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One (1) copy of the application, with the action of the President indicated by endorsement thereon, and one (1) of the certified copies of the information and affidavits shall be filed in the office of the Tribal Secretary to remain of record in that office. The other copies of all papers shall be forwarded with the President's requisition.

§ 13-3864. Payment of Account of Agent; Method as Exclusive; Classification.

A. When the President, in the exercise of the authority conferred by law, demands from the executive authority of a state the surrender to tribal authorities of a fugitive from justice, the accounts of the persons employed by the President for that

purpose shall be paid by the Tribe upon presentation to and approval of the account by the Tribal Council.

B. No compensation, fee or reward shall be paid to or received by a public officer of the Tribe, or other person, for a service rendered in procuring from the President the demand, the surrender of the fugitive, conveying the fugitive to this state, or detaining him therein, except as provided in this section, and any person receiving or accepting such compensation, fee or reward in violation of the provisions of this section is guilty of a Class D offense.

§ 13-3865. Exemption From Civil Process. A person brought within the exterior boundaries of the Reservation on extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which he is returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had ample opportunity to return to the state from which he was extradited.

§ 13-3865.01. Written Waiver of Extradition Proceedings; Prior Waiver.

A. Any person who is arrested within the exterior boundaries of the Reservation and who is charged with having committed a crime in a state or alleged to have escaped from confinement or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections 13-3847 and 13-3848 and all other procedures incidental to extradition proceedings by executing or subscribing in the presence of a judge of the Trial Division a writing which states that he consents to return to the demanding state, except that before the waiver is executed or subscribed to by the person it is the duty of the Trial Division to inform the person of his right to the issuance or service of a warrant of extradition and the right to contest extradition by habeas corpus as provided in section 13-3850.

B. If the consent is duly executed, the Trial Division shall direct the officer who has custody of the person to deliver the person promptly to the accredited agent or agents of the demanding state and to deliver or cause to be delivered to the agent or agents a copy of the consent.

C. Notwithstanding subsection A of this section, tribal peace officers holding a person who is alleged to have broken the terms of his probation, parole, bail or other release shall immediately deliver the person to the duly authorized agent of the demanding state without the requirement of a President's warrant if all of the following apply:

1. The person has signed a prior waiver of extradition as a term of his current probation, parole, bail or other release in the demanding state.

2. The law enforcement agency holding the person has received both of the following:

(a) An authenticated copy of the prior waiver of extradition signed by the person.

(b) A photograph and fingerprints properly identifying the person as the person who signed the waiver.

D. This section does not constitute a waiver by this Tribe of its right, power or privilege to try a fugitive for a criminal offense committed within the exterior boundaries of the Reservation. If a criminal charge is pending against the fugitive in the Tribal Court, the fugitive's transfer of custody if subject to the discretion of the President as provided for in section 13-3859 and the provisions of sections 13-3855, 13-3856 and 13-3857 do not apply.

E. The delivery of a fugitive to an agent of a demanding state does not constitute a waiver by this Tribe of its right, power or privilege to regain custody of the person by extradition, detainer proceedings or other process for the purpose of trial, sentencing or punishment for any criminal offense charged against the person by the Tribe.

F. Any proceeding under this subchapter that results or fail to resulting the rendition of a fugitive person by extradition or detainer proceedings does not constitute a waiver by the Tribe of its rights, privileges or jurisdiction.

§ 13-3866. No Right of Asylum. After a person has been brought back to the Reservation upon extradition proceedings, he may be tried by the Tribe for other crimes which he may be charged with having committed within the exterior boundaries of the Reservation as well as that specified in the requisition for his extradition.

§ 13-3867. Interpretation. The provisions of this subchapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those jurisdictions which enact it.

Subchapter 7
Arrest

§ 13-3881. Arrest; How Made; Force and Restraint.

A. An arrest is made by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the arrest.

B. No unnecessary or unreasonable force shall be used in making an arrest, and the person arrested shall not be subjected to any greater restraint than necessary for his detention.

§ 13-3882. Time of Making Arrest. An arrest may be made on any day and at any time of the day or night.

§ 13-3883. Arrest By Peace Officer Without Warrant.

A. A peace officer may, without a warrant, arrest a person if he has probable cause to believe:

1. A Class A offense or a felony under the law of another jurisdiction has been committed and probable cause to believe the person to be arrested has committed the felony.

2. A Class B offense or a misdemeanor under the law of another jurisdiction has been committed in his presence and probable cause to believe the person to be arrested has committed the offense or misdemeanor.

3. The person to be arrested has been involved in a traffic accident and violated any criminal section of the Tribal Motor Vehicle Code and that such violation occurred prior to or immediately following such traffic accident.

4. A Class C or D offense or a misdemeanor or a petty offense under the law of another jurisdiction has been committed and probable cause to believe the person to be arrested has committed the offense or misdemeanor. A person arrested under this paragraph is eligible for release under section 13-3903.

B. A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation. A peace officer who serves a copy of the traffic complaint shall do so within a reasonable time of the alleged criminal or civil traffic violation.

§ 13-3885. Arrest of Principal by Surety. For the purpose of surrendering the defendant, a surety on the bail bond of defendant may arrest him before the forfeiture of the undertaking, or by written authority endorsed on a certified copy of the undertaking, may empower any adult person of suitable discretion to do so.

§ 13-3886. Arrest by Telephone or Telegram; Filing Copy of Warrant.

A. Any Tribal Court judge may, by an endorsement under his hand upon a warrant of arrest, authorize the service of the warrant by telegraph or telephone, and thereafter a telegraphic or telephonic copy of such warrant may be sent by telegraph or telephone to one or more peace officers. The copy shall be as effectual in the hands of any officer, and he shall proceed in the same manner under it, as though he held an original warrant issued by the Tribal Court judge making the endorsement.

B. Every officer causing a telegraphic or telephonic copy of a warrant to be sent, shall certify as correct and file in the telegraph or telephone office from which such copy is sent, a copy of the warrant and endorsement thereon, and shall return the original with a statement of his action thereunder.

§ 13-3887. Method of Arrest by Officer by Virtue of Warrant. When making an arrest by virtue of a warrant the officer shall inform the person to be arrested of the cause of the arrest and of the fact that a warrant has been issued for his arrest, except when he flees or forcibly resists before the officer has opportunity so to inform him, or when the giving of such information will imperil the arrest. The officer need not have the warrant in his possession at the time of the arrest, but after the arrest, if the person arrested so requires, the warrant shall be shown to him as soon as practicable.

§ 13-3888. Method of Arrest by Officer Without Warrant. When making an arrest without a warrant, the officer shall inform the person to be arrested of his authority and the cause of the arrest, unless the person to be arrested is then engaged in the commission of an offense, or is pursued immediately after its commission or after an escape, or flees or forcibly resists before the officer has opportunity so to inform him, or when the giving of such information will imperil the arrest.

§ 13-3891. Right of Officer to Break Into Building. An officer, in order to make an arrest either by virtue of a warrant, or when authorized to make such arrest for a felony without a warrant, as provided in section 13-3883, may break open a door or window of any building in which the person to be arrested is or is reasonably believed to be, if the officer is refused admittance after he has announced his authority and purpose.

§ 13-3892. Right of Private Person to Break Into Building. A private person, in order to make an arrest where a felony was committed in his presence may break open a door or window of any building in which the person to be arrested is or is reasonably believed to be, if he is refused admittance after he has announced his purpose.

§ 13-3893. Right to Break Door or Window to Effect Release. When an officer or private person has entered a building in accordance with the provisions of section 13-3891 or 13-3892, he may break open a door or window of the building, if detained therein, when necessary for the purpose of liberating himself.

§ 13-3894. Right to Break Into Building in Order to Effect Release of Person Making Arrest Detained Therein. A peace officer or a private person may break open a door or window of any building when necessary for the purpose of liberating a person who entered the building in accordance with the provisions of section 13-3891 or 13-3892 and is detained therein.

§ 13-3895. Weapons to be Taken From Person Arrested. Any peace officer making a lawful arrest may take from the person arrested all weapons which he may have about his person and shall deliver them to the Tribal Court Clerk.

§ 13-3896. Arrest After Escape or Rescue; Method of Recapture.

A. If a person lawfully arrested escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and retake him without a warrant at any time and in any place with the exterior boundaries of the Reservation.

B. To retake the person escaping or rescued the person from whose custody he escaped who is lawfully pursuing may use the same means as are authorized for an arrest.

§ 13-3901. Right of Spokesperson to Visit Person Arrested. Any spokesperson shall, at the request of the person arrested or of some one acting in his behalf, be permitted, under reasonable regulations, to visit the person arrested.

§ 13-3902. Treatment of Arrested Person. No peace officer, or other official engaged in administering the criminal law, shall use oppressive methods of any kind for the purpose of securing a confession or other evidence of guilt from an arrested person.

§ 13-3904. Violation of Promise to Appear; Classification.

A. Any person knowingly violating his written promise to appear is guilty of a Class D offense regardless of the disposition of the charge upon which he was originally arrested.

B. A written promise to appear in court may be complied with by an appearance by a spokesperson.

§ 13-3905. Detention for Obtaining Evidence of Identifying Physical Characteristics.

A. A peace officer who is engaged, within the scope of his authority, in the investigation of an alleged criminal offense punishable by at least six (6) months in the tribal jail, may make written application upon oath or affirmation to the Trial Division for an order authorizing the temporary detention, for the purpose of obtaining evidence of identifying physical characteristics, of an identified or particularly described individual residing in or found within the exterior boundaries of the Reservation. The order shall require the presence of the identified or particularly described individual at such time and place as the Trial Division shall direct for obtaining the identifying physical characteristic evidence. Such order may be issued by the Trial Division upon a showing of all of the following:

1. Reasonable cause for belief that a specifically described criminal offense punishable by at least six (6) months in the tribal jail has been committed.

2. Procurement of evidence of identifying physical characteristics from an identified or particularly described individual may contribute to the identification of the individual who committed such offense.

3. Such evidence cannot otherwise be obtained by the investigating officer from the law enforcement agency employing the affiant.

B. Any order issued pursuant to the provisions of this section shall specify the following:

1. The alleged criminal offense which is the subject of the application.

2. The specific type of identifying physical characteristic evidence which is sought.

3. The relevance of such evidence to the particular investigation.

4. The identity or description of the individual who may be detained for obtaining such evidence.

5. The name and official status of the investigative officer authorized to effectuate such detention and obtain such evidence.

6. The place at which the obtaining of such evidence shall be effectuated.

7. The time that such evidence shall be taken except that no person may be detained for a period of more than three (3) hours for the purpose of taking such evidence.

8. The period of time, not exceeding fifteen (15) days, during which the order shall continue in force and effect. If the order is not executed within fifteen (15) days, a new order may be issued, pursuant to the provisions of this section.

C. The order issued pursuant to this section shall be returned to the Trial Division not later than thirty days after its date of issuance and shall be accompanied by a sworn statement indicating the type of evidence taken. The Trial Division shall give to the person from whom such evidence was taken a copy of the order and a copy of the sworn statement indicating what type of evidence was taken, if any.

D. For the purposes of this section, "identifying physical characteristics" includes, but is not limited to, the fingerprints, palm prints, footprints, measurements, handwriting, handprinting, sound of voice, blood samples, urine samples, saliva samples, hair samples, comparative personal appearance, or photographs of an individual.

Subchapter 8
Search Warrant

§ 13-3911. Definition. A search warrant is an order in writing issued in the name of the Tribe, signed by a judge of the Tribal Court, directed to a peace officer, commanding him to search for personal property, persons or items described in section 13-3912.

§ 13-3912. Grounds for Issuance. A search warrant may be issued upon any of the following grounds:

1. When the property to be seized was stolen or embezzled.

2. When the property or things to be seized were used as a means of committing a public offense.

3. When the property or things to be seized are in the possession or a person having the intent to use them as a means of committing a public offense or in possession of another to whom he may have delivered it for the purpose of concealing it or preventing it being discovered.

4. When property or things to be seized consist of any item or constitute any evidence which tends to show that a particular public offense has been committed, or tends to show that a particular person has committed the public offense.

5. When the property is to be searched and inspected by an appropriate official in the interest of the public health, safety or welfare as part of an inspection program authorized by law.

6. When the person sought is the subject of an outstanding arrest warrant.

§ 13-3913. Conditions Precedent to Issuance. No search warrant shall be issued except on probable cause, supported by affidavit, naming or describing the person and particularly describing the property to be seized and the place to be searched.

§ 13-3914. Examination on Oath; Affidavits.

A. The Tribal Court judge may, before issuing the warrant, examine on oath the person or persons seeking the warrant, and any witnesses produced, and must take his affidavit, or their affidavits, in writing, and cause the same to be subscribed by the party or parties making the affidavit. The Tribal Court judge may also, before issuing the warrant, examine any other sworn affidavit submitted to him which sets forth facts tending to establish probable cause for the issuance of the warrant.

B. The affidavit or affidavits must set forth the facts tending to establish the grounds of the application, or probable cause for believing they exist.

C. In lieu of, or in addition to, a written affidavit, or affidavits, as provided in subsection A of this section, the Tribal Court judge may take an oral statement under oath which shall be recorded on tape, wire, or other comparable method. This statement may be given in person to the Tribal Court judge, or by telephone, radio, or other means of electronic communication. This statement shall be deemed to be an affidavit for the purposes of issuance of a search warrant. In such cases if a recording of the sworn statement has been made, the Tribal Court judge shall direct that the statement be transcribed and certified by the Tribal Court judge and filed with the Trial Division.

§ 13-3915. Issuance; Form of Warrant; Duplicate Original Warrant.

A. If the Tribal Court judge is satisfied that probable cause for the issuance of the warrant exists, he shall issue a search warrant commanding a search by any peace officer of the person or place specified, for the items described.

B. The warrant shall be in substantially the form provided for in this Code.

C. The Tribal Court judge may orally authorize a peace officer to sign the judge's name on a search warrant if the peace officer applying for the warrant is not in the actual physical presence of the judge. This warrant shall be called a duplicate original search warrant and shall be deemed a search warrant for the purposes of this Chapter. In such cases, the judge shall cause to be made an original warrant and shall enter the exact time of issuance of the duplicate original warrant on the face of the original warrant. Upon the return of the duplicate original warrant, the judge shall cause the original warrant and the duplicate original warrant to be filed as provided for in section 13-3923.

§ 13-3916. Service of Warrant; Breaking and Entering to Execute.

A. A search warrant may be served by any peace officer but by no other person except in aid of an officer engaging in such service.

B. An officer may break into a building, premises, or vehicle or any part thereof, to execute the warrant when:

1. After notice of his authority and purpose, he receives no response within a reasonable time.

2. After notice of his authority and purpose, he is refused admittance.

C. A peace officer executing a search warrant may seize any property discovered in the course of the execution of such warrant if he has reasonable cause to believe that such item is subject to seizure under section 13-3912, even if such property is not enumerated in the warrant.

D. A peace officer executing a search warrant may make or cause to be made photographs, measurements, impressions, or scientific tests.

E. A peace officer executing a search warrant directing a search of premises or a vehicle may search any person therein if:

1. It is reasonably necessary to protect himself or others form the use of any weapon which may be concealed upon the person, or

2. It reasonably appears that property or items enumerated in the search warrant may be concealed upon the person.

§ 13-3917. Time of Service; Exception. Upon a showing of good cause therefor, the Tribal Court judge may, in his discretion insert a direction in the warrant that it may be served at any time of the day or night. In the absence of such a direction, the warrant may be served only in the daytime. For the purposes of this section "night" is defined as the period from 10:00 p.m. to 6:30 a.m.

§ 13-3918. Time of Execution and Return.

A. A search warrant shall be executed and returned to the Tribal Court Clerk within five (5) days after its date. Upon expiration of that time, the warrant, unless executed, is void. The documents and records of the court relating to the search warrant need not be open to the public until the execution and return of the warrant or the expiration of the five-day period after issuance. Thereafter, if the warrant has been served, such documents and records shall be open to the public as a judicial record.

B. If a duplicate original search warrant has been executed, the peace officer who executed the warrant shall enter the exact time of its execution on its face.

§ 13-3919. Receipt for Property. When an officer takes any property under the warrant, he shall give a detailed receipt for the property taken to the person from whom it was taken, or in whose possession it was found. If the property was not taken from a person, the officer shall leave the receipt at the place where he found the property.

§ 13-3920. Retention of Property. All property or things taken on a warrant shall be retained in the custody of the seizing officer or agency which he represents, subject to the order of the Trial Division.

§ 13-3921. Return of Warrant and Inventory; Copy of Inventory.

A. The officer shall return the warrant to the Trial Division and at the same time deliver to the Tribal Court Clerk a written inventory of the property taken. The inventory shall be made publicly, or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present. The inventory shall be verified by the affidavit of the officer which shall be taken by the Tribal Court Clerk at the time it is delivered to the Tribal Court Clerk. The affidavit shall recite that the inventory contains a true and detailed account of all the property taken.

B. The Tribal Court Clerk shall, if requested, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

§ 13-3922. Controverting Grounds of Issuance; Procedure; Restoration of Property.

A. If the grounds on which the warrant was issued are controverted by an owner of seized property, the Trial Division shall proceed to take testimony relative thereto. If it appears that the property taken is not the same as that described in the warrant and is not within section 13-3916, subsection C, D or E, or section 13-3925, subsections B and C, or that probable cause does not exist for believing the items are subject to seizure, the Trial Division shall cause the property to be restored to the person from whom it was taken, provided that the property is not such that any interest in it is subject to forfeiture or its possession would constitute a criminal offense.

B. Any order under this section as to a property interest is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of that person in all actions pursuant to this Title. Other orders are appealable, if permitted by the Tribal Court's rules of civil procedure.

§ 13-3923. Filing and Transmittal of Papers. The Tribal Court Clerk shall annex the affidavits, the search warrant and return, and the inventory, and if the Tribal Court does not have jurisdiction to inquire into the offense in respect to which the warrant was issued, he shall at once file the warrant, and return the affidavits and inventory to the court having jurisdiction to inquire into the offense.

§ 13-3925. Admissibility of Evidence Obtained as A Result of Unlawful Search or Seizure; Definitions.

A. If a party in a criminal proceeding seeks to exclude evidence from the trier of fact because of the conduct of a peace officer in obtaining the evidence, the proponent of the evidence may urge that the peace officer's conduct was taken in a reasonable, good faith belief that the conduct was proper and that the evidence discovered should not be kept from the trier of fact if otherwise admissible.

B. The Tribal Court shall not suppress evidence which is otherwise admissible in a criminal proceeding if the Tribal Court determines that the evidence was seized by a peace officer as a result of a good faith mistake or technical violation.

C. In this section:

1. "Good faith mistake" means a reasonable judgmental error concerning the existence of facts which if true would be sufficient to constitute probable cause.

2. "Technical violation" means a reasonable good faith reliance upon:

(a) A statute which is subsequently ruled unconstitutional.

(b) A warrant which is later invalidated due to a good faith mistake.

(c) A controlling court precedent which is later overruled, unless the court overruling the precedent orders the new precedent to be applied retroactively.

D. This section shall not be construed to limit the enforcement of any appropriate civil remedy or criminal sanction in actions pursuant to other provisions of law and in accordance with the Tribe's sovereign immunity against any individual or government entity found to have conducted an unreasonable search or seizure.

This Section approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996. This Section is similar to the section of the same number in the Arizona Revised Statutes Annotated that was in effect at the time of enactment of this Code.

Subchapter 10
Disposition of Seized Property in Custody of Tribal Court or Peace Officer

§ 13-3941. Disposition and Return of Stolen or Embezzled Property.

A. When property alleged to have been stolen or embezzled comes into the custody of a peace officer or of the Tribal Court, the property shall be held subject to the order of the Tribal Court judge before whom the complaint is laid or who examines the charge against the person accused of stealing or embezzling such property.

B. The person to whom the property is delivered shall enter in a suitable book a description of every article of property alleged to be stolen or embezzled and brought into the office, or taken from the person of a prisoner, and shall attach a number to each article and make a corresponding entry thereof.

C. The Tribal Court judge shall, upon satisfactory proof of the ownership, order the property to be delivered to the owner. The order entitles the owner to demand and receive the property unless the property, or any part thereof, is required as evidence in any criminal action. If it is so required, it shall remain in possession of the officer or Tribal Court judge until the termination of the action.

D. If the property has not been delivered to the owner, the Trial Division before which a trial is had for the theft or embezzlement of the property may, on proof of title of the owner, order it restored to him.

E. No charge or fee may be imposed upon the owner of property ordered to be returned to him pursuant to this section.

§ 13-3942. Delivery of Unclaimed Stolen or Embezzled Property. If property stolen or embezzled is not claimed by the owner within six months after the conviction of the

person for such theft or embezzlement, the Trial Division shall, upon payment of the necessary expenses incurred in its preservation, sell such property in the same manner as personal property is sold under execution in a civil action, and the proceeds shall be paid into the tribal general fund.

§ 13-4092.1 Arizona Criminal Statutes Not Adopted into this Code. Note that some of the sections listed below may have been listed as repealed or renumbered at the time this Code was enacted and that not all sections of Title 13 of the Arizona Revised Statutes are sequentially numbered.

§ 13-102
§ 13-104
§ 13-105 ¶¶ 3, 4, 16, 21, 23, 27
§ 13-106 - § 13-109
§ 13-112 - § 13-113
§ 13-115 ¶ B
§ 13-118 - § 13-119
§ 13-120 ¶ B
§ 13-121
§ 13-123 - § 13-166

§ 13-202 - § 13-203
§ 13-211 - § 13-294

§ 13-305 - § 13-306

§ 13-414 - § 13-415
§ 13-421 - § 13-492

§ 13-502
§ 13-504 - § 13-593

§ 13-601 - § 13-602
§ 13-603 ¶¶ A, B, D, E, F, H, I, J, K
§ 13-604 - § 13-689

§ 13-701 - § 13-707.01
§ 13-710 - § 13-714

§ 13-801 - § 13-803
§ 13-805 - § 13-806
§ 13-808
§ 13-809 ¶¶ B, C
§ 13-810 ¶ C.2
§ 13-811
§ 13-821 - § 13-895

Chapter 9

§ 13-1004 ¶¶ B.3, B.4
§ 13-1007 - § 13-1094

Chapter 11

§ 13-1201
§ 13-1204 ¶¶ A.4, C
§ 13-1206 - § 13-1207
§ 13-1209 ¶ D
§ 13-1221 - § 13-1294

§ 13-1302
§ 13-1304 - § 13-1328

§ 13-1401
§ 13-1403 - § 13-1472

§ 13-1502 - § 13-1503
§ 13-1506 - § 13-1507
§ 13-1509 - § 13-1599.01

Chapter 16

§ 13-1702
§ 13-1705 - § 13-1761

§ 13-1804
§ 13-1809 ¶C
§ 13-1810 - § 13-1811
§ 13-1821 - § 13-1885

§ 13-1903 - § 13-2000

§ 13-2003 - § 13-2006
§ 13-2008 - § 13-2027

§ 13-2102
§ 13-2104
§ 13-2106
§ 13-2109

§ 13-2204 - § 13-2208
§ 13-2301 ¶ D.4
§ 13-2302 - § 13-2304
§ 13-2307
§ 13-2308 ¶¶ E, F, G
§ 13-2308.01 - § 13-2315
§ 13-2317

§ 13-2401 - § 13-2402
§ 13-2405 ¶ B
§ 13-2406

§ 13-2502 - § 13-2503
§ 13-2504 ¶¶ A.1, A.2
§ 13-2505 - § 13-2506
§ 13-2511

§ 13-2603 - § 13-2605

§ 13-2703 - § 13-2704

§ 13-2813 - § 13-2801 ¶ 5
§ 13-2811 - § 13-2812
§ 13-2814

§ 13-2902 - § 13-2903
§ 13-2907
§ 13-2909 - § 13-2920
§ 13-2922 - § 13-2923

Chapter 30

§ 13-3103 - § 13-3108
§ 13-3110
§ 13-3111 ¶¶ D.3, E, I
§ 13-3112 - § 13-3114

§ 13-3201 - § 13-3210
§ 13-3211 ¶¶ 1, 2, 3, 4
§ 13-3212 - § 13-3213
§ 13-3214 ¶ B

Chapter 33

§ 13-3401 ¶¶ 2, 3, 6, 10, 11, 18, 19, 22, 23, 24, 25, 30
§ 13-3402
§ 13-3404 - § 13-3411
§ 13-3413 ¶¶ A.3, B, C, D, E, F
§ 13-3415 ¶ D
§ 13-3416 - § 13-3421

Chapter 34.1

Chapter 35

Chapter 35.1

§ 13-3601 - § 13-3611
§ 13-3615 - § 13-3621
§ 13-3623 - § 13-3624

Chapter 37

§ 13-3802 - § 13-3807
Subchapter 2
Subchapter 3
§ 13-3856
§ 13-3858
§ 13-3868 - § 13-3870
Subchapter 6
§ 13-3884
§ 13-3889 - § 13-3890
§ 13-3897 - § 13-3899
§ 13-3900
§ 13-3903
§ 13-3906
§ 13-3922 ¶ C
§ 13-3924
§ 13-3925 ¶ E
Subchapter 9
Subchapters 11 - 30

Chapters 39 - 43

This section was amended by Resolution R-187-96, enacted December 11, 1996, by removing § 13-1205 from the list of sections not adopted.

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