

Title 15 - CRIMES AND PUNISHMENTS

CHAPTER 193 - GENERAL PROVISIONS

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SECTION 193.010 Definitions. As used in this title, unless the context otherwise requires, the words and terms defined in [SECTION 193.011](#) to [193.0245](#), inclusive, have the meanings ascribed to them in those sections.

SECTION 193.011 “Boat” defined. “Boat” includes ships, steamers and other structures adapted to navigation or movement from place to place by water.

SECTION 193.0115 “Bond” defined. “Bond” includes an undertaking.

SECTION 193.012 “Break” defined. “Break,” when used in connection with the crime of burglary, includes:

1. Breaking or violently detaching any part, internal or external, of a building.
2. Opening, for the purpose of entering therein, any outer door of a building or of any room, apartment or set of apartments therein separately used and occupied, or any window, shutter, scuttle or other thing used for covering or closing any opening thereto or therein, or which gives passage from one part thereof to another.
3. Obtaining entrance into such building or apartment by any threat or artifice, used for that purpose, or by collusion with any person therein.
4. Entering such building, room or apartment by or through any pipe, chimney or other opening, or by excavating or digging through or under a building or the walls or foundation thereof.

SECTION 193.0125 “Building” defined. “Building” includes every house, shed, boat, watercraft, railway car, tent or booth, whether completed or not, suitable for affording shelter for any human being, or as a place where any property is or will be kept for use, sale or deposit.

SECTION 193.013 “Corrupt” and “corruptly” defined. “Corrupt” and “corruptly” import a wrongful desire to acquire or cause some pecuniary or other advantage to himself or another, by the person to whom applicable.

SECTION 193.014 “Dwelling house” defined. “Dwelling house” includes every building or structure which has been usually occupied by a person lodging therein at night, and whenever it is so constructed as to consist of two or more parts or rooms occupied or intended to be occupied, whether permanently or temporarily, by different tenants separately by usually lodging therein at night, or for any other separate purpose, each part shall be deemed a separate dwelling house of the tenant occupying it.

SECTION 193.0145 “Enter” defined. “Enter,” when constituting an element or part of a crime, includes the entrance of the offender, or the insertion of any part of his body, or of any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate a person, or to detach or remove property.

SECTION 193.0155 “Indicted,” “indictment,” “informed against” and “information” defined. “Indicted” and “indictment” include “informed against” and “information”; and “informed against” and “information” include “indicted” and “indictment.”

SECTION 193.016 “Judge” defined. “Judge” includes every judicial officer authorized, alone or with others, to hold or preside over a court of record.

SECTION 193.0165 “Jurors” defined. “Jurors” include a talesman, and extend to jurors in all courts, whether of record or not.

SECTION 193.017 “Knowingly” defined. “Knowingly” imports a knowledge that the facts exist which constitute the act or omission of a crime, and does not require knowledge of its unlawfulness. Knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent person upon inquiry.

SECTION 193.0175 “Malice” and “maliciously” defined. “Malice” and “maliciously” import an evil intent, wish or design to vex, annoy or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

SECTION 193.018 “Neglect,” “negligence,” “negligent” and “negligently” defined. “Neglect,” “negligence,” “negligent” and “negligently” import a want of such attention to the nature or probable consequences of an act or omission as an ordinarily prudent person usually exercises in his own business.

SECTION 193.0185 “Nighttime” defined. “Nighttime” includes the period between sunset and sunrise.

SECTION 193.019 “Officer” and “public officer” defined. “Officer” and “public officer” include all officers, members and employees of:

1. The Tribe;
 2. Any political subdivision of this Tribe;
 3. Any other special Tribal, public corporation or quasi-public corporation of this Tribe; and
 4. Any agency, board or commission established by this TRIBE or any of its political subdivisions,
- ➔ and all persons exercising or assuming to exercise any of the powers or functions of a public officer.

SECTION 193.0195 “Owner” defined. “Owner” of any property includes any person who has a general or special property in the whole or any part thereof, or lawful possession thereof, either actual or constructive.

SECTION 193.0205 “Person” defined. “Person” includes this Tribe or any other Tribe, government or country which may lawfully own property within this Tribe whenever it is used to designate a party whose property may be the subject of an offense.

SECTION 193.021 “Personal property” defined. “Personal property” includes dogs and all domestic animals and birds, water, gas and electricity, all kinds or descriptions of money, chattels and effects, all instruments or writings completed and ready to be delivered or issued by the maker, whether actually delivered or issued or not, by which any claim, privilege, right, obligation or authority, or any right or title to property, real or personal, is or purports to be, or upon the happening of some future event may be

evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged or affected, and every right and interest therein.

SECTION 193.0215 “Prison” defined. “Prison” means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest.

SECTION 193.022 “Prisoner” defined. “Prisoner” includes any person held in custody under process of law, or under lawful arrest.

SECTION 193.0225 “Property” defined. “Property” includes both real and personal property.

SECTION 193.023 “Railway” or “railroad” defined. “Railway” or “railroad” includes all railways, railroads and street railways, whether operated by steam, electricity or any other motive power.

SECTION 193.0235 “Real property” defined. “Real property” includes every Tribal, interest and right in lands, tenements and hereditaments, corporeal or incorporeal.

SECTION 193.024 “Signature” defined. “Signature” includes any memorandum, mark or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto.

SECTION 193.0245 “Writing” defined. “Writing” includes printing.

SECTION 193.030 Construction of provisions of title. Every provision of this title shall be construed according to the fair import of its terms.

SECTION 193.040 Intent to defraud. Whenever an intent to defraud:

1. Shall be made an element of an offense, it shall be sufficient if an intent appears to defraud any person, association or body politic or corporation, whatever.
2. Constitutes a part of a crime, it is not necessary to aver or prove an intent to defraud any particular person.

SECTION 193.045 Repeated conviction as element or aggravation of offense: Place of former conviction immaterial. Wherever it is provided in any section of this title that a repeated conviction constitutes an element of an offense or aggravates an offense and affects the determination of penalty, it is immaterial whether such former conviction was obtained in Tribal Court or elsewhere.

SECTION 193.050 Conduct constituting crime; prohibited or unlawful acts; common law.

1. No conduct constitutes a crime unless prohibited by some statute of this Tribe or by some ordinance or like enactment of a political subdivision of this Tribe.
2. An act which is declared to be unlawful by any statute, ordinance or like enactment is prohibited within the meaning of this section and of [SECTION 193.170](#).
3. The provisions of the common law relating to the definition of public offenses apply to any public offense which is so prohibited but is not defined, or which is so prohibited but is incompletely defined.
4. This section does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

SECTION 193.060 Construction of provisions similar to existing laws. The provisions of this title, insofar as they are substantially the same as existing statutes, shall be construed as continuations thereof and not as new enactments.

SECTION 193.070 Effect of provisions upon past offenses. Nothing contained in any provision of this title shall apply to an offense committed or act done at any time before the day when this title shall take effect. Such an offense shall be punished according to, and such act shall be governed by, the provisions of law existing when it is done or committed, in the same manner as if this title had not been passed.

SECTION 193.075 Effect of repeal of statute: Penalty previously imposed; prior violations.

1. Any repeal, express or implied, of any statute shall not release or extinguish any penalty, forfeiture or liability incurred under such statute, unless the repealing act expressly so provides.

2. The repeal of any law creating a criminal offense does not constitute a bar to the indictment or information and punishment of an act already committed in violation of the law so repealed, unless the intention to bar the indictment and information and punishment is expressly declared in the repealing statute.

SECTION 193.080 Application to existing civil rights. Nothing in this title shall be deemed to affect any civil right or remedy existing at the time when it shall take effect by virtue of the common law or of the provision of any statute.

SECTION 193.090 Civil remedies preserved. The omission to specify or affirm in this title any liability to any damages, penalty, forfeiture or other remedy imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable in this title, shall not affect any right to recover or enforce the same.

SECTION 193.100 Proceedings to impeach or remove officers and others preserved. The omission to specify or affirm in this title any ground of forfeiture of a public office, or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority conferred by law, shall not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition or suspension.

SECTION 193.105 Termination of employment, removal from office or impeachment of public employee or officer upon conviction for sale of controlled substance.

1. If, during the course of his employment, an employee of the Tribe or of any political subdivision of the Tribe is convicted on or after October 1, 1989, of violating any state, federal or Tribal law prohibiting the sale of any controlled substance, the employer upon discovery of the conviction shall terminate the employment of the employee.

2. If, during the course of his tenure in office, an officer of the Tribe is convicted of violating any federal or Tribal law prohibiting the sale of any controlled substance, the court as part of the penalty for such a conviction shall remove the officer from his office.

3. If, during the course of his tenure in office, an elected or appointed officer of the Tribe is convicted of violating any state, federal or Tribal law prohibiting the sale of any controlled substance, the prosecuting officer who obtained the conviction shall file a certified copy of the judgment roll with the Secretary of Tribe. The Secretary of Tribe shall lay the certified copy of the judgment roll before the Tribal Council at its next session for removal from office.

4. This section does not apply to a justice or judge of the court system.

SECTION 193.110 Authority of courts-martial unaffected; punishment for contempt unaffected.

This title does not affect any power conferred by law upon any court-martial, or other military authority, or

officer, to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal or officer, to impose or inflict punishment for a contempt.

SECTION 193.120 Classification of crimes.

1. Every crime which may be punished by imprisonment FOR ONE YEAR is a **Category A offense**.
2. Every crime punishable by a fine of not more than **\$2,500 or by imprisonment for not more than 6 months, is a Category B offense**
3. Every other crime is a **Category C, D or E offense**.

SECTION 193.130 Categories and punishment of Offenses.

(a) **A CATEGORY A OFFENSE IS AN OFFENSE FOR WHICH THE MAXIMUM PENALTY THAT MAY BE IMPOSED IS NOT MORE THAN 1 YEAR IMPRISONMENT AND A \$5000.00 FINE.**

(b) **A CATEGORY B OFFENSE IS AN OFFENSE FOR WHICH THE MAXIMUM PENALTY THAT MAY BE IMPOSED IS NOT MORE THAN 6 MONTHS AND A \$2500.00 FINE.**

(c) **A CATEGORY C OFFENSE IS AN OFFENSE FOR WHICH THE MAXIMUM PENALTY THAT MAY BE IMPOSED IS NOT MORE THAN 3 MONTHS IMPRISONMENT AND A \$1000.00 FINE.**

(d) **A CATEGORY D OFFENSE IS AN OFFENSE FOR WHICH THE MAXIMUM PENALTY THAT MAY BE IMPOSED IS NOT MORE THAN 1 MONTH IMPRISONMENT AND A \$500.00 FINE.**

(e) **A CATEGORY E OFFENSE IS AN OFFENSE FOR WHICH THE MAXIMUM PENALTY THAT MAY BE IMPOSED IS NOT MORE THAN 10 DAYS IMPRISONMENT AND A \$250.00 FINE.**

SECTION 193.140 Removal of Persons, Power and Grounds. In addition to any other sanctions, the Court, on motion by the Tribal Prosecutor, after hearing, may order the removal or exclusion of a person from the Reservation whose presence may be injurious to members of the Ely Shoshone Tribe.

The removal may be for any of the following:

- (1) For Conviction of a Category A offense.
- (2) Violation of any ordinance, regulation, rule, or resolution of the Ely Shoshone Tribe.
- (3) Violation of any federal or state law or regulation.
- (4) Any other action that is injurious to the members of the Ely Shoshone Tribe.

SECTION 193.140 Removal, Appeal and Enforcement. A Court order for removal or exclusion is an appealable order. A Court order for removal or exclusion shall be enforced by any law enforcement officer having authority within the territorial jurisdiction of the Ely Shoshone Tribe.

SECTION 193.142 Removal by Tribal Council.

- (a) the Ely Shoshone Tribal Council shall be informed by the Court of any case in which there has been a request for removal or exclusion or in which the court is considering removal or exclusion on its own motion. The Ely Shoshone Tribal Council, by majority vote, may transfer a removal or exclusion hearing from the Court to the Council for hearing. The Council's decision on removal or exclusion shall be final.
- (b) The Tribal Council, on its own motion or by majority vote after a request from any member, may initiate removal proceedings against a person whether or not any Court proceedings are pending. The Tribal Council may afford notice and a hearing to the non-member. Exclusion shall be by resolution upon a majority vote.

- (c) The Council's decision on removal or exclusion shall be final and only reviewable by the Tribal Council after one year.

SECTION 193.155 Penalty for public offense proportionate to value of property affected or loss resulting from offense. Every person who is guilty of a public offense proportionate to the value of the property affected or the loss resulting from the offense shall be punished as follows:

1. Where the value of the loss is \$5,000 or more or where the damage results in impairment of public communication, transportation or police and fire protection, for a **Category A offense**.
2. Where the value of the loss is \$250 or more but less than \$5,000, for a **Category B offense**.
3. Where the value of the loss is \$25 or more but less than \$250, for a **Category C offense**.
4. Where the value of the loss is less than \$25, by a fine of not more than \$500 for a **Category D offense**.

SECTION 193.160 Penalty for Category C offense by corporations when not fixed by statute. In all cases where a corporation is convicted of an offense for the commission of which a natural person would be punishable as for a **CATEGORY C OFFENSE**, and there is no other punishment prescribed by law, the corporation is punishable by a fine not exceeding \$1,000.

SECTION 193.170 Prohibited act is Category C offense when no penalty imposed. Whenever the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the committing of such act shall be a **Category C offense**.

SECTION 193.190 To constitute crime there must be unity of act and intent. In every crime or public offense there must exist a union, or joint operation of act and intention, or criminal negligence.

SECTION 193.200 Intent: How manifested. Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused.

SECTION 193.210 When person considered to be of sound mind. A person is of sound mind who is not affected with insanity and who has arrived at the age of 14 years, or before that age if he knew the distinction between good and evil.

SECTION 193.240 Resistance by party about to be injured. Resistance sufficient to prevent the offense may be made by the party about to be injured:

1. To prevent an offense against his person, or his family or some member thereof.
2. To prevent an illegal attempt, by force, to take or injure property in his lawful possession.

SECTION 193.250 Resistance by other persons. Any other person, in aid or defense of a person about to be injured, may make resistance sufficient to prevent the offense.

SECTION 193.260 Persons acting by command of officers of justice. Whenever the officers of justice are authorized to act in the prevention of public offenses, other persons, who by their command act in their aid, are justified in so doing.

SECTION 193.320 Omission to perform duty: When not punishable. No person shall be punished for an omission to perform an act when such act has been performed by another acting in his behalf and competent to perform it.

SECTION 193.330 Punishment for attempts.

1. An act done with the intent to commit a crime, and tending but failing to accomplish it, is an attempt to commit that crime. A person who attempts to commit a crime, unless a different penalty is prescribed by statute, shall be punished as if he had committed that offense.

2. Nothing in this section protects a person who, in an unsuccessful attempt to commit one crime, does commit another and different one, from the punishment prescribed for the crime actually committed. A person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime was consummated, unless the court in its discretion discharges the jury and directs the defendant to be tried for the crime itself.

SECTION 193.340 Required disclosure of certain information by provider of Internet service; penalty; issuance and enforcement of administrative subpoena; fee for information.

1. A provider of Internet service who violates the provisions of 18 U.S.C. § 2703 is guilty of a Category C offense

2. In investigating criminal activity that involves or may involve the use of a computer, the Tribal Prosecutor, or Tribal Police on this Reservation, may, if there is reasonable cause to believe that an individual subscriber or customer of a provider of Internet service has committed an offense through the use of the services of the provider of Internet service, issue a subpoena to carry out the procedure set forth in 18 U.S.C. § 2703 to compel the provider of Internet service to provide information concerning the individual subscriber or customer that the provider of Internet service is required to disclose pursuant to 18 U.S.C. § 2703.

3. If a person who has been issued a subpoena pursuant to subsection 2 charges a fee for providing the information, the fee must not exceed the actual cost for providing the information.