

Chapter 32-a. Criminal Code

§1. Title; Effective Date; Official Notes

1. The title of Chapter 32-a of the Penobscot Nation's laws is "Criminal Code." Alleged crimes occurring within the jurisdiction of the Penobscot Nation Judiciary are governed by this Code.
2. This code will be effective, June 7, 2025 and applies to crimes committed subsequent to the effective date.
3. Sections of this Criminal Code which include an Official Note provide explanatory information and, when applicable, must be utilized in the interpretation of that particular section.
4. Chapter 32-a shall be known and may be cited as the Penobscot Nation Criminal Code. Alleged crimes occurring under the jurisdiction of the Penobscot Nation tribal court shall be governed by these laws from June 7, 2025
5. This code shall be effective, June 7, 2025 and shall apply to crimes committed subsequent to its effective date. Prosecution of crimes committed after the effective date and under the classification of Class C, D, and E, under the state of Maine criminal code, shall be governed by this code.
6. Sentencing authority provided under (STATUTE) allowing for no longer than 9 years of consecutive sentences of three years.
7. The Penobscot Nation asserts its criminal jurisdiction over the Penobscot Indian Territory to the fullest extent authorized under Federal and Penobscot laws, including over non-Indians. In such cases where the Nation asserts its criminal jurisdiction over a non-Indian, a non-Indian defendant retains all the procedural rights of a criminal defendant and must be prosecuted according to the Penobscot laws and Judiciary rules, as may be amended.
8. The Penobscot Nation Judiciary is vested with jurisdiction to enforce all provisions of the Penobscot Nation's laws against a non-Indian who has committed a Covered Crime against an Indian victim within the Penobscot Indian Territory.
9. For purposes of prosecuting non-Indian Violations of Protection Orders, the following conditions must be met:
 - i. The protection order was issued against the defendant:
 - ii. The protection order is consistent with 18 U.S.C. § 2265(b), and:
 - iii. The violation relates to that portion of the protection order that provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, the protected person.

Section 1-a. Purpose and Jurisdiction

1. With the adoption of this Criminal Code, the Penobscot Nation exercises its inherent tribal sovereignty. The purpose of this Criminal Code is to keep the Penobscot Nation's lands safe by providing clear notice of laws and procedures governing the prosecution and adjudication of crimes within the Penobscot Indian Territory.
2. The Penobscot Nation asserts its criminal jurisdiction over the Penobscot Indian Territory to the fullest extent authorized under Federal, State and Penobscot laws, including over non-Indians who commit a Covered Crime, as provided for in Chapter 32, against an Indian victim within the Penobscot Indian Territory.

Official Note for Section 1-a

1. In 2024, the State of Maine enacted 30 M.R.S. 6209-B to recognize the criminal jurisdiction of the Penobscot Nation over Class C, D, and E crimes of Title 17-A of Maine State code. This Penobscot Nation Criminal Code is the codification of those crimes into Penobscot laws. For simplicity, the statutory numbering in this Criminal Code mirrors that of the State the Maine's Title 17-A.
2. Covered Crimes are part of the Nation's Special Tribal Criminal Jurisdiction as recognized in the Violence Against Women Act.

§2. Definitions

As used in this code, unless a different meaning is plainly required, the following words and variants thereof have the following meanings.

1. "Act" or "action" means a voluntary bodily movement.
2. "Acted" includes, where appropriate, possessed or omitted to act.
3. "Actor" includes, where appropriate, a person who possesses something or who omits to act.
- 3-B. "Another jurisdiction" means the Federal Government, the United States military, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, federally recognized Indian tribes and each of the several states except Penobscot Nation or Maine.
- 3-C. "Adult probation supervisor" means any person who:
 - a. Is an employee of the Department of Corrections;
 - b. Supervises adult probation officers; and
 - C. Is trained, qualified and authorized by the Commissioner of Corrections to use deadly force.
4. "Benefit" means any gain or advantage to the actor, and includes any gain or advantage to a person other than the actor which is desired or consented to by the actor.
5. "Bodily injury" means physical pain, physical illness or any impairment of physical condition.
- 5-A. "Corrections officer" has the same meaning as in Title 25, section 2801-A, subsection 2.
- 5-B. "Corrections supervisor" means any person who:
 - a. Is an employee of the Department of Corrections;
 - b. Supervises corrections officers;
 - c. Is trained, qualified and authorized by the Commissioner of Corrections to use deadly force
- 5-C. "Concurrent sentence" means a sentence involving imprisonment that runs at the same time as one or more other sentences involving imprisonment while an individual is simultaneously in execution of each of them. A sentence involving imprisonment does not need to be imposed at the same time or begin or end at the same time as another sentence to be a concurrent sentence.
- 5-D. "Consecutive sentence" means a sentence involving imprisonment that immediately follows in time another sentence involving imprisonment. A sentence is not a consecutive sentence with respect to another sentence if an individual is in execution of both sentences at any time. A sentence involving imprisonment does not need to be imposed at the same time as another sentence to be a consecutive sentence.
6. "Criminal negligence" has the meaning set forth in section 35.
- 6-A. "Critical infrastructure" means critical public or private infrastructure resource systems involved in providing services necessary to ensure or protect the public health, safety and welfare, including, but not limited to, a public water system or a public water source; an emergency, governmental, medical, fire or law enforcement response system; a public utility system; a financial system; an educational system; or a food or clothing distribution system.

7. "Culpable" has the meaning set forth in section 35.

7-A. "Day," for purposes of imposing imprisonment or probation, administrative release or supervised release, means 24 hours.

8. "Deadly force" means physical force that a person uses with the intent of causing, or that a person knows to create a substantial risk of causing, death or serious bodily injury. Except as provided in section 101, subsection 5, intentionally, knowingly or recklessly discharging a firearm in the direction of another person or at a moving vehicle constitutes deadly force.

9. Dangerous weapon.

a. "Use of a dangerous weapon" means the use of a firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which, in the manner it is used or threatened to be used is capable of producing death or serious bodily injury.

b. "Armed with a dangerous weapon" means in actual possession, regardless of whether the possession is visible or concealed, of:

(1) A firearm;

(2) Any device designed as a weapon and capable of producing death or serious bodily injury; or

(3) Any other device, instrument, material or substance, whether animate or inanimate, which, in the manner it is intended to be used by the actor, is capable of producing or threatening death or serious bodily injury. For purposes of this definition, the intent may be conditional.

c. When used in any other context, "dangerous weapon" means a firearm or any device designed as a weapon and capable of producing death or serious bodily injury.

d. For purposes of this subsection, proof that a thing is presented in a covered or open manner as a dangerous weapon gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that it, in fact, is a dangerous weapon.

10. "Dwelling place" means a structure that is adapted for overnight accommodation of persons, or sections of any structure similarly adapted. A dwelling place does not include garages or other structures, whether adjacent or attached to the dwelling place, that are used solely for the storage of property or structures formerly used as dwelling places that are uninhabitable. It is immaterial whether a person is actually present.

11. "Element of the crime" has the meaning set forth in section 32.

12. "Financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

12-A. "Firearm" means any weapon, whether loaded or unloaded, which is designed to expel a projectile by the action of an explosive and includes any such weapon commonly referred to as a pistol, revolver, rifle, gun, machine gun or shotgun. Any weapon which can be made into a firearm by the insertion of a firing pin, or other similar thing, or by repair, is a firearm.

13. "Government" means the United States, any state or any county, municipality or other political unit within territory belonging to the State, the United States, or any department, agency or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government or formed pursuant to interstate compact or international treaty.

14. "He" means, where appropriate, "she," or an organization.

14-A. "Individual" means a human being.

15. "Intentionally" has the meaning set forth in section 35.

15-A. "Jail" means a specially constructed or modified facility designated by law or regularly used for detention for a period of up to 12 months.

16. "Knowingly" has the meaning set forth in section 35.
17. "Law enforcement officer" means any person who by virtue of public employment is vested by law with a duty to maintain public order, to prosecute offenders, to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes, or to perform probation functions or who is an adult probation supervisor.
- 17-A. "Month," for purposes of imposing imprisonment or probation, administrative release or supervised release, means 30 days.
18. "Nondeadly force" means any physical force which is not deadly force.
19. "Organization" means a corporation, partnership or unincorporated association.
20. "Person" means a human being or an organization.
21. "Public servant" means any official officer or employee of any branch of government and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function. A person is considered a public servant upon the person's election, appointment or other designation as such, although the person may not yet officially occupy that position
- 21-A. "Public utility system" includes any pipeline, gas, electric, steam, water, oil, transportation, sanitation, communication or other system operated for public use regardless of ownership.
- 21-B. "Public water source" has the same meaning as in Title 22, section 2641.
- 21-C. "Public water system" has the same meaning as in Title 22, section 2601, subsection 8.
22. "Recklessly" has the meaning set forth in section 35.
23. "Serious bodily injury" means a bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or loss or substantial impairment of the function of any bodily member or organ, or extended convalescence necessary for recovery of physical health.
- 23-A. "Strict liability crime" has the meaning set forth in section 34.
- 23-B. "Split sentence" means a sentence involving imprisonment, an initial portion of which is served and the remainder of which is suspended, accompanied by probation or administrative release.
24. "Structure" means a building or other place designed to provide protection for persons or property against weather or intrusion, but does not include vehicles and other conveyances whose primary purpose is transportation of persons or property unless such vehicle or conveyance, or a section thereof, is also a dwelling place.
25. "Terroristic intent" means the intent to do any of the following for the purpose of intimidating or coercing a civilian population or to affect the conduct of government:
- Cause serious bodily injury or death to multiple persons;
 - Cause substantial damage to multiple structures; or
 - Cause substantial damage to critical infrastructure.
26. "Week," for purposes of imposing imprisonment or probation, administrative release or supervised release, means 7 days.
27. "Year," for purposes of imposing imprisonment or probation, administrative release or supervised release, means 365 days.

§3. All crimes defined by statute; civil actions

- No conduct constitutes a crime unless it is prohibited
 - By this code; or
 - By any statute or private act outside this code, including any rule, regulation or ordinance authorized by and lawfully adopted under a statute.
- This code does not bar, suspend, or otherwise affect any right or liability for damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in such civil action constitutes an offense defined in this code.

§4. Classification of crimes in this Code

1. Except for murder, all crimes defined by this Code are classified for purposes of sentencing as Class A, Class B, Class C, Class D and Class E crimes.

Sections 5,6 and 7 intentionally omitted

§8. Statute of limitations

1. It is a defense that prosecution was commenced after the expiration of the applicable period of limitations provided in this section, except that the following prosecutions may be commenced at any time:
 - A. A prosecution for murder or criminal homicide in the first or 2nd degree; or B. If the victim had not attained the age of 18 years at the time of the crime, a prosecution for incest; unlawful sexual contact; sexual abuse of a minor; rape or gross sexual assault, formerly denominated as gross sexual misconduct; unlawful sexual touching; or sexual exploitation of a minor.
2. Except as provided in subsection 1 or 2-A, a prosecution for a Class A, Class B or Class C crime must be commenced within 6 years after it is committed and a prosecution for a Class D or Class E crime must be commenced within 3 years after it is committed.
- 2-A. A prosecution for a Class A, Class B or Class C crime involving unlawful sexual contact or gross

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This subsection does not apply to a Class D crime enhanced to a Class C crime pursuant to section 1604, subsection 5, paragraph B.

3. The periods of limitations shall not run:
 - A. During any time when the accused is absent from the Nation, but in no event shall this provision extend the period of limitation otherwise applicable by more than 5 years;
 - B. During any time when a prosecution against the accused for the same crime based on the same conduct is pending in this Nation; or
 - C. During any time when a prosecution against the accused for the corresponding juvenile crime based on the same conduct is pending in the Juvenile Court. For purposes of this section, pending includes any appeal period and, if an appeal is taken, any period pending its final disposition.
4. If a timely complaint, information or indictment is dismissed for any error, defect, insufficiency or irregularity, a new prosecution for the same crime based on the same conduct may be commenced within 6 months after the dismissal, or during the next session of the grand jury, whichever occurs later, even though the periods of limitations have expired at the time of such dismissal or will expire within such period of time.
5. If the period of limitation has expired, a prosecution may nevertheless be commenced for:
 - A. Any crime based upon breach of fiduciary obligation, within one year after discovery of the crime by an aggrieved party or by a person who has a legal duty to represent an aggrieved party, and who is not a party to the crime, whichever occurs first;
 - B. Any crime based upon official misconduct by a public servant, at any time when such person is in public office or employment or within 2 years thereafter
 - C. This subsection shall in no event extend the limitation period otherwise applicable by more than 5 years.
6. For purposes of this section:

- A. A crime is committed when every element thereof has occurred, or if the crime consists of a continuing course of conduct, at the time when the course of conduct or the defendant's complicity therein is terminated; and
- B. A prosecution is commenced whenever one of the following occurs:
 - (1) A criminal complaint is filed;
 - (2) An indictment is returned; or
 - (3) Following waiver of an indictment, an information is filed.
- 7. The defense established by this section shall not bar a conviction of a crime included in the crime charged, notwithstanding that the period of limitation has expired for the included crime, if as to the crime charged the period of limitation has not expired or there is no such period, and there is evidence which would sustain a conviction for the crime charged.

§9. Indictment and jurisdiction

Notwithstanding any other provision of law:

- 1. All proceedings for Class A, B and C crimes must be prosecuted by indictment, unless indictment is waived, in which case prosecution must be as the Supreme Judicial Court provides by rule;
- 2. All proceedings for murder shall be prosecuted by indictment; and
- 3. The District Courts have jurisdiction to try civil violations and Class D and E crimes and to impose sentence in Class A, B and C crimes in which the District Court has accepted a plea of guilty.

§9-A. Allegation of prior conviction when sentence enhanced

- 1. Except as otherwise provided by law, a prior conviction must be specially alleged if the sentencing provision of a crime requires that a present sentence be enhanced because the person has been previously convicted of a specified crime. For the purpose of this section, a sentence is enhanced only if the maximum sentence that may be imposed is increased or a mandatory minimum nonsuspendable sentence must be imposed. The Supreme Judicial Court shall provide by rule the manner of alleging the prior conviction in a charging instrument and conditions for using that prior conviction at trial.
- 2. Proof that the name and date of birth of the person charged with the current principal offense are the same as those of the person who has been convicted of the prior offense gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person charged with the current principal offense is the same person as that person convicted of the prior offense.
- 3. Prior convictions may be considered for purposes of enhancing a present sentence if the date of each prior conviction precedes the commission of the offense being enhanced by no more than 10 years, except as otherwise provided by law. More than one prior conviction may have occurred on the same day. The date of conviction is deemed to be the date that the sentence is imposed, even though an appeal was taken.
- 4. Proof of the date stated in a complaint, information, indictment or other formal charging instrument gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that such a date is the date the offense was committed, notwithstanding the use of the words "on or about" or the equivalent. The convictions of 2 or more prior offenses that were committed within a 3-day period are considered a single conviction for purposes of this section.

§10-A. Jurisdiction over juveniles

- 1. A criminal proceeding may not be commenced against any person who had not attained 18 years of age at the time of the alleged crime, except as the result of a finding of probable cause authorized by Title 15, section 3101, subsection 4, or in regard to the offenses over which juvenile courts have no jurisdiction, as provided in Title 15, section 3101, subsection 2.

2. When it appears that the defendant's age, at the time the crime charged was committed, may have been such that the court lacks jurisdiction by reason stated in subsection 1, the court shall hold a hearing on the matter and the burden shall be on the Nation to establish the court's jurisdiction, as defined by subsection 1, by a preponderance of the evidence.
3. Except as provided in subsections 1 and 2, when concurrent jurisdiction has been established pursuant to Title 15, section 3101, subsection 2, paragraph F, the Juvenile Court has exclusive original jurisdiction over a case involving a juvenile who is alleged to have committed a juvenile crime as defined in Title 15, section 3103, subsection 1.

§12. De minimis infractions

1. The court may dismiss a prosecution if, upon notice to or motion of the prosecutor and opportunity to be heard, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds the defendant's conduct:
 - A. Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the crime; or
 - B. Did not actually cause or threaten the harm sought to be prevented by the law defining the crime or did so only to an extent too trivial to warrant the condemnation of conviction; or
 - C. Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in defining the crime
2. The court shall not dismiss a prosecution under this section without filing a written statement of its reasons.

§13. Other offenses

1. The existence of a crime other than the one charged but based on the same conduct or arising from the same criminal episode, for which a person may be prosecuted, whether that crime is a lesser or greater crime as to elements or sentencing classification, shall not preclude prosecution for the offense charged unless a contrary legislative intent plainly appears.

§13-A. Included offenses

1. The court shall not instruct the jury to consider, nor shall the court as factfinder consider, a lesser included offense, as defined in subsection 2, unless on the basis of the evidence there is a rational basis for finding the defendant guilty of that lesser included offense. If a rational basis exists, the lesser included offense shall be considered by the factfinder if requested by either the Nation or defendant; otherwise, its consideration shall be a matter within the discretion of the court.
2. For purposes of this section, a lesser included offense is an offense carrying a lesser penalty which:
 - A. As legally defined, must necessarily be committed when the offense or alternative thereof actually charged, as legally defined, is committed. If the lesser offense is defined in a manner that it may be committed in alternative ways, each alternative which meets the above definition shall be deemed to be a lesser included offense. Facts which are a basis for sentencing classification of either the crime charged or the lesser crime shall be considered alternatives of those crimes;
 - B. Meets the requirements of paragraph A, except that a culpable state of mind is required which is different than that charged but which results in lesser criminal liability; or C. Is by statute expressly declared to be charged when the greater offense is charged
3. The court in its discretion may instruct the jury to consider, or may as factfinder consider, any other offense or another alternative of the offense charged, although that other offense or alternative is not a lesser included offense, if:

- A. On the basis of the evidence, there is a rational basis for finding the defendant guilty of the other offense;
- B. The other offense does not carry a greater penalty than the offense charged;
- C. Both the Nation and the defendant consent to the consideration of the other offenses by the factfinder; and
- D. The defendant waives any applicable right to an indictment for the other offense. When the other offense is defined in such a manner that it may be committed in alternative ways, the court may instruct the jury to consider, or may as factfinder consider, any alternative which meets the requirements of this subsection.

§14. Separate trials

A defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal episode, if such offenses were known to the appropriate prosecuting officer at the time of the commencement of the first trial and were within the jurisdiction of the same court and within the same venue, unless the court, on application of the prosecuting attorney or of the defendant or on its own motion, orders any such charge to be tried separately if it is satisfied that justice so requires.

§15. Warrantless arrests by a law enforcement officer

1. Except as otherwise specifically provided, a law enforcement officer may arrest without a warrant:
 - A. Any person who the officer has probable cause to believe has committed or is committing:
 - (1) Murder;
 - (2) Any Class A, Class B or Class C crime;
 - (3) Assault while hunting;
 - (4) Any offense defined in chapter 45;
 - (5) Assault, criminal threatening, terrorizing or stalking, if the officer reasonably believes that the person may cause injury to others unless immediately arrested;
 - (5-A) Assault, criminal threatening, terrorizing, stalking, criminal mischief, obstructing the report of a crime or injury or reckless conduct if the officer reasonably believes that the person and the victim are family or household members, as defined in Title 19-A, section 4102, subsection 6 or dating partners as defined in Title 19-A, section 4102, subsection 4;
 - (5-B) Domestic violence assault, domestic violence criminal threatening, domestic violence terrorizing, domestic violence stalking or domestic violence reckless conduct;
 - (6) Theft as defined in section 357, when the value of the services is \$1,000 or less if the officer reasonably believes that the person will not be apprehended unless immediately arrested;
 - (7) Forgery, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;
 - (8) Negotiating a worthless instrument if the officer reasonably believes that the person will not be apprehended unless immediately arrested;
 - (9) A violation of a condition of probation when requested by a probation officer or juvenile community corrections officer;
 - (10) Violation of a condition of release in violation of Title 15, section 1026, subsection 3; Title 15, section 1027, subsection 3; Title 15, section 1051, subsection 2; and Title 15, section 1092;
 - (11) Theft involving a detention under Title 17, section 3521;
 - (12) Harassment, as set forth in section 506-A;
 - (13) Violation of a protection order, as specified in Title 5, section 4659, subsection 2; Title 15, section 321, subsection 6; former Title 19, section 769, subsection 2; former Title 19, section 770, subsection 5; Title 19-A, former section 4011, subsection 3; Title 19-A, former section 4012, subsection 5; Title 19-A, section 4113, subsection 3; and Title 19-A, section 4114, subsection 5;

- (14) A violation of a sex offender registration provision under Title 34-A, chapter 15;
 - (15) A violation of a requirement of administrative release when requested by the attorney for the Nation;
 - (16) A violation of a condition of supervised release for sex offenders when requested by a probation officer;
 - (17) A violation of a court-imposed deferment requirement of a deferred disposition when requested by the attorney for the Nation;
 - (18) A violation of a condition of release as provided in Title 15, section 3203-A, subsection 9;
 - (19) A violation of a condition of supervised community confinement granted pursuant to Title 34-A, section 3036-A when requested by a probation officer;
 - (20) A violation of a condition of placement on community reintegration status granted pursuant to Title 34-A, section 3810 and former section 4112 when requested by a juvenile community corrections officer;
 - (21) A violation of a condition of furlough or other rehabilitative program authorized under Title 34-A, section 3035 when requested by a probation officer or juvenile community corrections officer;
 - (22) A violation of preconviction or post-conviction bail pursuant to Title 15, section 1095, subsection 2 or section 1098, subsection 2 upon request of the attorney for the Nation;
 - (23) Failure to appear in violation of Title 15, section 1091, subsection 1, paragraph A;
 - (24) A Class D or Class E crime committed while released on preconviction or post-conviction bail; or
 - (25) A violation of a condition of release from a community confinement monitoring program pursuant to Title 30-A, section 1659-A; and
- B. Any person who has committed or is committing in the officer's presence any Class D or Class E crime.
2. For the purposes of subsection 1, paragraph B, criminal conduct has been committed or is being committed in the presence of a law enforcement officer when one or more of the officer's senses afford that officer personal knowledge of facts that are sufficient to warrant a prudent and cautious law enforcement officer's belief that a Class D or Class E crime is being or has just been committed and that the person arrested has committed or is committing that Class D or Class E crime. An arrest made pursuant to subsection 1, paragraph B must be made at the time of the commission of the criminal conduct, or some part thereof, or within a reasonable time thereafter or upon fresh pursuit.

§15-A. Issuance of summons for criminal offense

1. A law enforcement officer who has probable cause to believe a crime has been or is being committed by a person may issue or have delivered a written summons to that person directing that person to appear in the appropriate trial court to answer the allegation that the person has committed the crime. The summons must include the signature of the officer, a brief description of the alleged crime, the time and place of the alleged crime and the time, place and date the person is to appear in court. The form used must be the Uniform Summons and Complaint. A person to whom a summons is issued or delivered must give a written promise to appear. If the person refuses to sign the summons after having been ordered to do so by a law enforcement officer, the person commits a Class E crime. As soon as practicable after service of the summons, the officer shall cause a copy of the summons to be filed with the court.
2. Any person who a law enforcement officer has probable cause to believe has committed or is committing a crime other than one listed under section 15, subsection 1, paragraph A, and to whom a law enforcement officer is authorized to deliver a summons pursuant to subsection 1, who intentionally fails or refuses to provide to that officer reasonably credible evidence of that person's

correct name, address or date of birth commits a Class E crime, if the person persists in the failure or refusal after having been informed by the officer of the provisions of this subsection. If that person furnishes the officer evidence of the person's correct name, address and date of birth and the evidence does not appear to be reasonably credible, the officer shall attempt to verify the evidence as quickly as is reasonably possible. During the period the verification is being attempted, the officer may require the person to remain in the officer's presence for a period not to exceed 2 hours. During this period, if the officer reasonably believes that the officer's safety or the safety of others present requires, the officer may search for any dangerous weapon by an external patting of that person's outer clothing. If in the course of the search the officer feels an object that the officer reasonably believes to be a dangerous weapon, the officer may take such action as is necessary to examine the object, but may take permanent possession of the object only if it is subject to forfeiture. The requirement that the person remain in the presence of the officer does not constitute an arrest. After informing that person of the provisions of this subsection, the officer may arrest the person either if the person intentionally refuses to furnish any evidence of that person's correct name, address or date of birth or if, after attempting to verify the evidence as provided for in this subsection, the officer has probable cause to believe that the person has intentionally failed to provide reasonably credible evidence of the person's correct name, address or date of birth.

3. If, at any time subsequent to an arrest made pursuant to subsection 2, it appears that the evidence of the person's correct name, address and date of birth was accurate, the person must be released from custody and any record of that custody must show that the person was released for that reason. If, upon trial for violating subsection 2, a person is acquitted on the ground that the evidence of the person's correct name, address and date of birth was accurate, the record of acquittal must show that that was the ground.
4. Any person who fails to appear in court as directed by a summons served on that person pursuant to subsection 1 or to otherwise respond in accordance with law on or before the date specified in the summons commits a Class E crime. Upon that person's failure to appear or respond, the court may issue a warrant of arrest. It is an affirmative defense to prosecution under this subsection that the failure to appear or respond resulted from just cause.

§16. Warrantless arrests by a private person

Except as otherwise specifically provided, a private person has the authority to arrest without a warrant:

1. Any person who the private person has probable cause to believe has committed or is committing:
 - A. Murder; or
 - B. Any Class A, Class B or Class C crime.
2. Any person who, in fact, is committing in the private person's presence and in a public place any of the Class D or Class E crimes described in section 207; 209; 211; 254; 255-A; 501-A, subsection 1, paragraph B; 503; 751; 806; or 1002.
3. For the purposes of subsection 2, in the presence has the same meaning given in section 15, subsection

§17. Enforcement of civil violations

1. A law enforcement officer who has probable cause to believe that a civil violation has been committed by a person must issue or have delivered a written summons to that person directing the person to appear in the District Court to answer the allegation that the person has committed the violation. The summons must include the signature of the officer, a brief description of the alleged violation, the time and place of the alleged violation and the time, place and date the person is to appear in court. The form used must be the Violation Summons and Complaint, as prescribed in Title 29-A, section 2601, for traffic infractions and the Uniform Summons and Complaint for other civil violations. A person to whom a summons is issued or delivered must give a written promise to appear. If the person refuses to sign the summons after having been ordered to do so by a law enforcement officer, the person commits a Class E crime. The law enforcement officer may not

order a person to sign the summons for a civil violation unless the civil violation is an offense defined in Title 12; Title 23, section 1980; Title 28-A, section 2052; or Title 29-A.

Every law enforcement officer issuing a Violation Summons and Complaint charging the commission of a traffic infraction shall file the original of the Violation Summons and Complaint with the violations bureau within 5 days of the issuance of that Violation Summons and Complaint. Every law enforcement officer issuing a Uniform Summons and Complaint that charges the commission of an offense shall file the original of the Uniform Summons and Complaint with the District Court having jurisdiction over the offense or in such other location as instructed by the Chief Judge of the District Court without undue delay and, in any event, within 5 days after the issuance of the Uniform Summons and Complaint.

2. Any person to whom a law enforcement officer is authorized to issue or deliver a summons pursuant to subsection 1 who intentionally fails or refuses to provide the officer reasonably credible evidence of the person's correct name, address or date of birth commits a Class E crime, if the person persists in that failure or refusal after having been informed by the officer of the provisions of this subsection. If the person furnishes the officer evidence of that person's correct name, address and date of birth and the evidence does not appear to be reasonably credible, the officer shall attempt to verify the evidence as quickly as is reasonably possible. During the period that verification is being attempted, the officer may require the person to remain in the officer's presence for a period not to exceed 2 hours. During this period, if the officer reasonably believes that the officer's safety or the safety of others present requires, the officer may search for any dangerous weapon by an external patting of the person's outer clothing. If in the course of the search the officer feels an object that the officer reasonably believes to be a dangerous weapon, the officer may take such action as is necessary to examine the object, but may take permanent possession of the object only if it is subject to forfeiture. The requirement that the person remain in the presence of the officer does not constitute an arrest.

After informing the person of the provisions of this subsection, the officer may arrest the person either if the person intentionally refuses to furnish any evidence of that person's correct name, address or date of birth or if, after attempting to verify the evidence as provided for in this subsection, the officer has probable cause to believe that the person has intentionally failed to provide reasonably credible evidence of the person's correct name, address or date of birth.

3. If, at any time subsequent to an arrest made pursuant to subsection 2, it appears that the evidence of the person's correct name, address and date of birth was accurate, the person must be released from custody and any record of that custody must show that the person was released for that reason. If, upon trial for violating subsection 2, a person is acquitted on the ground that the evidence of the person's correct name, address and date of birth was accurate, the record of acquittal must show that that was the ground.
4. Any person who fails to appear in court as directed by a summons served on that person pursuant to subsection 1 or to otherwise respond in accordance with law on or before the date specified in the summons commits a Class E crime. Upon that person's failure to appear or respond, the court may issue a warrant of arrest. It is an affirmative defense to prosecution under this subsection that the failure to appear or respond resulted from just cause.

§18. Homelessness crisis protocol

A person who lacks a home who commits a listed offense because the person lacks a home must be treated in accordance with the homelessness crisis protocol adopted by the responding law enforcement agency under subsection 2.

1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
 - A. "Law enforcement agency" has the same meaning as in Title 25, section 3701, subsection 1.

B. "Listed offense" means:

- (1) Criminal trespass in violation of section 402, subsection 1, paragraph C or F;
- (2) Disorderly conduct in violation of section 501-A, subsection 1, paragraph A;
- (3) Indecent conduct in violation of section 854 that is based on urinating in public;
- (4) Possession of a scheduled drug in violation of chapter 45 that is based on using the scheduled drug; or
- (5) Public drinking in violation of Title 17, section 2003-A, subsection 2.

2. Adoption of homelessness crisis protocol. This subsection governs the adoption of homelessness crisis protocols by the Attorney General and law enforcement agencies. A homelessness crisis protocol must include access and referral to crisis services, mental health and substance use disorder professionals, emergency and transitional housing and case management services.

A. By January 1, 2022, the Attorney General shall adopt a model homelessness crisis protocol.

Rules adopted pursuant to this paragraph are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

B. By March 1, 2022, all law enforcement agencies shall adopt homelessness crisis protocols. The protocol of a law enforcement agency may, but is not required to, conform to the protocol adopted by the Attorney General.

3. Law enforcement response to a listed offense by a person who lacks a home. A law enforcement officer who responds to a call regarding or encounters a person who is committing or has committed a listed offense shall inquire whether the person has a home or lacks a home. If the person lacks a home, the law enforcement officer shall respond to the person using the homelessness crisis protocol adopted by the officer's law enforcement agency under subsection 2.

§19. Crimes involving minors

(REALLOCATED FROM TITLE 17-A, SECTION 18)

A person who poses as a minor is deemed a minor for the purposes of a crime under chapter 11, 12 or 35 that has as an element or aggravating factor that the victim or person other than the actor is a minor.

CHAPTER 2

CRIMINAL LIABILITY; ELEMENTS OF CRIMES

§32. Elements of crimes defined

A person may not be convicted of a crime unless each element of the crime is proved by the Nation beyond a reasonable doubt. "Element of the crime" means the forbidden conduct; the attendant circumstances specified in the definition of the crime; the intention, knowledge, recklessness or negligence as may be required; and any required result.

§33. Result as an element; causation

1. Unless otherwise provided, when causing a result is an element of a crime, causation may be found when the result would not have occurred but for the conduct of the defendant, operating either alone or concurrently with another cause.
2. In cases in which concurrent causation is generated as an issue, the defendant's conduct must also have been sufficient by itself to produce the result.

§34. Culpable state of mind as an element

1. A person is not guilty of a crime unless that person acted intentionally, knowingly, recklessly or negligently, as the law defining the crime specifies, with respect to each other element of the crime, except as provided in subsection 4. When the state of mind required to establish an element of a

crime is specified as "willfully," "corruptly," "maliciously" or by some other term importing a state of mind, that element is satisfied if, with respect thereto, the person acted intentionally or knowingly.

2. When the definition of a crime specifies the state of mind sufficient for the commission of that crime, but without distinguishing among the elements thereof, the specified state of mind applies to all the other elements of the crime, except as provided in subsection 4.
3. When the law provides that negligence is sufficient to establish an element of a crime, that element is also established if, with respect thereto, a person acted intentionally, knowingly or recklessly. When the law provides that recklessness is sufficient to establish an element of a crime, that element is also established if, with respect thereto, a person acted intentionally or knowingly. When the law provides that acting knowingly is sufficient to establish an element of the crime, that element is also established if, with respect thereto, a person acted intentionally.
4. Unless otherwise expressly provided, a culpable mental state need not be proved with respect to:
 - A. Any fact that is solely a basis for sentencing classification;
 - B. Any element of the crime as to which it is expressly stated that it must "in fact" exist;
 - C. Any element of the crime as to which the statute expressly provides that a person may be guilty without a culpable state of mind as to that element;
 - D. Any element of the crime as to which a legislative intent to impose liability without a culpable state of mind as to that element otherwise appears;
 - E. Any criminal statute as to which it is expressly stated to be a "strict liability crime" or otherwise expressly reflects a legislative intent to impose criminal liability without proof by the Nation of a culpable mental state with respect to any of the elements of the crime; or
 - F. Any criminal statute as to which a legislative intent to impose liability without a culpable state of mind as to any of the elements of the crime otherwise appears.
- 4-A. As used in this section, "strict liability crime" means a crime that, as legally defined, does not include a culpable mental state element with respect to any of the elements of the crime and thus proof by the Nation of a culpable state of mind as to that crime is not required.

§35. Definitions of culpable states of mind

1. "Intentionally."

- A. A person acts intentionally with respect to a result of the person's conduct when it is the person's conscious object to cause such a result.
- B. A person acts intentionally with respect to attendant circumstances when the person is aware of the existence of such circumstances or believes that they exist.

2. "Knowingly."

- A. A person acts knowingly with respect to a result of the person's conduct when the person is aware that it is practically certain that the person's conduct will cause such a result
- B. A person acts knowingly with respect to attendant circumstances when the person is aware that such circumstances exist.

3. "Recklessly."

- A. A person acts recklessly with respect to a result of the person's conduct when the person consciously disregards a risk that the person's conduct will cause such a result.
- B. A person acts recklessly with respect to attendant circumstances when the person consciously disregards a risk that such circumstances exist.
- C. For purposes of this subsection, the disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

4. "Criminal negligence."

- A. A person acts with criminal negligence with respect to a result of the person's conduct when the person fails to be aware of a risk that the person's conduct will cause such a result.
- B. A person acts with criminal negligence with respect to attendant circumstances when the person fails to be aware of a risk that such circumstances exist.
- C. For purposes of this subsection, the failure to be aware of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

5. "Culpable." A person acts culpably when the person acts with the intention, knowledge, recklessness or criminal negligence as is required.

§36. Ignorance or mistake

- 1. Evidence of ignorance or mistake as to a matter of fact or law may raise a reasonable doubt as to the existence of a required culpable state of mind.
- 2. Ignorance or mistake as to a matter of fact or law is a defense only if the law provides that the state of mind established by such ignorance or mistake constitutes a defense.
- 3. Although ignorance or mistake would otherwise afford a defense to the crime charged, the defense is not available if the defendant would be guilty of another crime had the situation been as the defendant supposed.
- 4. It is an affirmative defense if the defendant engages in conduct that the defendant believes does not legally constitute a crime if:
 - A. The statute violated is not known to the defendant and has not been published or otherwise reasonably made available prior to the conduct alleged; or
 - B. The defendant acts in reasonable reliance upon an official statement, afterward determined to be invalid or erroneous, contained in:
 - (1) A statute, ordinance or other enactment;
 - (2) A final judicial decision, opinion or judgment;
 - (3) An administrative order or grant of permission; or
 - (4) An official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the statute defining the crime. This subsection does not impose any duty to make any such official interpretation.
- 5. A mistaken belief that facts exist which would constitute an affirmative defense is not an affirmative defense, except as otherwise expressly provided.

§37. Intoxication

- 1. Except as provided in subsection 2, evidence of intoxication may raise a reasonable doubt as to the existence of a required culpable state of mind.
- 2. When recklessness establishes an element of the offense, if a person, due to self-induced intoxication, is unaware of a risk of which the person would have been aware had the person not been intoxicated, such unawareness is immaterial.
- 3. As used in this section:
 - A. "Intoxication" means a disturbance of mental capacities resulting from the introduction of alcohol, drugs or similar substances into the body; and
 - B. "Self-induced intoxication" means intoxication caused when a person intentionally or knowingly introduces into the person's body substances that the person knows or ought to know tend to cause intoxication, unless the person introduces them pursuant to medical advice or under such duress as would afford a defense to a charge of crime.

§38. Mental abnormality

Evidence of an abnormal condition of the mind may raise a reasonable doubt as to the existence of a required culpable state of mind.

An actor does not suffer from an abnormal condition of the mind based solely on the discovery of, knowledge about or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression or sexual orientation, including under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance toward the actor or in which the actor and victim dated or had a romantic or sexual relationship.

§39. Insanity

1. A defendant is not criminally responsible by reason of insanity if, at the time of the criminal conduct, as a result of mental disease or defect, the defendant lacked substantial capacity to appreciate the wrongfulness of the criminal conduct.
2. As used in this section, "mental disease or defect" means only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality. An abnormality manifested only by repeated criminal conduct or excessive use of alcohol, drugs or similar substances, in and of itself, does not constitute a mental disease or defect.
3. Lack of criminal responsibility by reason of insanity is an affirmative defense.

§40. Procedure upon plea of not guilty coupled with plea of not criminally responsible by reason of insanity

1. When the defendant enters a plea of not guilty together with a plea of not criminally responsible by reason of insanity, the defendant shall also elect whether the trial must be in 2 stages as provided for in this section, or a unitary trial in which both the issues of guilt and of insanity are submitted simultaneously to the jury. At the defendant's election, the jury must be informed that the 2 pleas have been made and that the trial will be in 2 stages.
2. If a 2-stage trial is elected by the defendant, there must be a separation of the issue of guilt from the issue of insanity in the following manner.
 - A. The issue of guilt must be tried first and the issue of insanity tried only if the jury returns a verdict of guilty. If the jury returns a verdict of not guilty, the proceedings must terminate.
 - B. Evidence of mental disease or defect, as defined in section 39, subsection 2, is not admissible in the guilt or innocence phase of the trial for the purpose of establishing insanity. Such evidence must be admissible for that purpose only in the 2nd phase following a verdict of guilty.
3. The issue of insanity must be tried before the same jury as tried the issue of guilt. Alternate jurors who were present during the first phase of the trial but who did not participate in the deliberations and verdict thereof may be substituted for jurors who did participate. The defendant may elect to have the issue of insanity tried by the court without a jury.
4. If the jury in the first phase returns a guilty verdict, the trial must proceed to the 2nd phase. The defendant and the Nation may rely upon evidence admitted during the first phase or they may recall witnesses. Any evidence relevant to insanity is admissible. The order of proof must reflect that the defendant has the burden of establishing the defendant's lack of criminal responsibility by reason of insanity. The jury shall return a verdict that the defendant is criminally responsible or not criminally responsible by reason of insanity. If the defendant is found criminally responsible, the court shall sentence the defendant according to law.
5. This section does not apply to cases tried before the court without a jury.

CHAPTER 3

CRIMINAL LIABILITY OF ACCOMPLICES, ORGANIZATIONS AND PLANTS

§57. Criminal liability for conduct of another; accomplices

1. A person may be guilty of a crime if it is committed by the conduct of another person for which the person is legally accountable as provided in this section.
2. A person is legally accountable for the conduct of another person when:
 - A. Acting with the intention, knowledge, recklessness or criminal negligence that is sufficient for the commission of the crime, the person causes an innocent person, or a person not criminally responsible, to engage in such conduct; or
 - B. The person is made accountable for the conduct of such other person by the law defining the crime; or
 - C. The person is an accomplice of such other person in the commission of the crime, as provided in subsection 3.
3. A person is an accomplice of another person in the commission of a crime if:
 - A. With the intent of promoting or facilitating the commission of the crime, the person solicits such other person to commit the crime, or aids or agrees to aid or attempts to aid such other person in planning or committing the crime. A person is an accomplice under this subsection to any crime the commission of which was a reasonably foreseeable consequence of the person's conduct; or
 - B. The person's conduct is expressly declared by law to establish the person's complicity.
4. A person who is legally incapable of committing a particular crime may be guilty thereof if it is committed by the conduct of another person for which the person is legally accountable.
5. Unless otherwise expressly provided, a person is not an accomplice in a crime committed by another person if:
 - A. The person is the victim of that crime;
 - B. The crime is so defined that it cannot be committed without the person's cooperation; or
 - C. The person terminates complicity prior to the commission of the crime by:
 - (1) Informing the person's accomplice that the person has abandoned the criminal activity; and
 - (2) Leaving the scene of the prospective crime, if the person is present thereat.
6. An accomplice may be convicted on proof of the commission of the crime and of the accomplice's complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted, or has been convicted of a different crime or degree of crime, or is not subject to criminal prosecution pursuant to section 10-A, subsection 1, or has an immunity to prosecution or conviction, or has been acquitted.

§60. Criminal liability of an organization

1. An organization is guilty of a crime when:
 - A. It omits to discharge a specific duty of affirmative performance imposed on it by law, and the omission is prohibited by this code or by a statute defining a criminal offense outside of this code; or
 - B. The conduct or result specified in the definition of the crime is engaged in or caused by an agent of the organization while acting within the scope of the agent's office or employment.
2. It is no defense to the criminal liability of an organization that the individual upon whose conduct the liability of the organization is based has not been prosecuted or convicted, has been convicted of a different offense, or is immune from prosecution.

§61. Individual liability for conduct on behalf of organization

1. An individual is criminally liable for any conduct the individual performs in the name of an organization or in its behalf to the same extent as if it were performed in the individual's own name or behalf. Such an individual must be sentenced as if the conduct had been performed in the individual's own name or behalf.
2. If a criminal statute imposes a duty to act on an organization, any agent of the organization having primary responsibility for the discharge of the duty is criminally liable if the agent recklessly omits to perform the required act, and the agent must be sentenced as if the duty were imposed by law directly upon the agent.

CHAPTER 5

DEFENSES AND AFFIRMATIVE DEFENSES; JUSTIFICATION

§101. General rules for defenses and affirmative defenses; justification

1. The Nation is not required to negate any facts expressly designated as a "defense," or any exception, exclusion or authorization that is set out in the statute defining the crime by proof at trial, unless the existence of the defense, exception, exclusion or authorization is in issue as a result of evidence admitted at the trial that is sufficient to raise a reasonable doubt on the issue, in which case the Nation must disprove its existence beyond a reasonable doubt. This subsection does not require a trial court to instruct on an issue that has been waived by the defendant. The subject of waiver is addressed by the Maine Rules of Unified Criminal Procedure.
2. Where the statute explicitly designates a matter as an "affirmative defense," the matter so designated must be proved by the defendant by a preponderance of the evidence.
3. Conduct that is justifiable under this chapter constitutes a defense to any crime; except that, if a person is justified in using force against another, but the person recklessly injures or creates a risk of injury to 3rd persons, the justification afforded by this chapter is unavailable in a prosecution for such recklessness. If a defense provided under this chapter is precluded solely because the requirement that the person's belief be reasonable has not been met, the person may be convicted only of a crime for which recklessness or criminal negligence suffices.
4. The fact that conduct may be justifiable under this chapter does not abolish or impair any remedy for such conduct which is available in any civil action.
5. For purposes of this chapter, use by a law enforcement officer, a corrections officer or a corrections supervisor of the following is use of nondeadly force:
 - A. Chemical mace or any similar substance composed of a mixture of gas and chemicals that has or is designed to have a disabling effect upon human beings; or
 - B. A less-than-lethal munition that has or is designed to have a disabling effect upon human beings. For purposes of this paragraph, "less-than-lethal munition" means a low-kinetic energy projectile designed to be discharged from a firearm that is approved by the Board of Trustees of the Maine Criminal Justice Academy.

§102. Public duty

1. Any conduct, other than the use of physical force under circumstances specifically dealt with in other sections of this chapter, is justifiable when it is authorized by law, including laws defining functions of public servants or the assistance to be rendered public servants in the performance of their duties; laws governing the execution of legal process or of military duty; and the judgments or orders of courts or other public tribunals.

2. The justification afforded by this section to public servants is not precluded:
 - A. By the fact that the law, order or process was defective provided it appeared valid on its face and the defect was not knowingly caused or procured by such public servant; or,
 - B. As to persons assisting public servants, by the fact that the public servant to whom assistance was rendered exceeded the public servant's legal authority or that there was a defect of jurisdiction in the legal process or decree of the court or tribunal, provided the person believed the public servant to be engaged in the performance of the public servant's duties or that the legal process or court decree was competent.

Official Note for Section 102

This section 102, "Public Duty", is adopted by the Penobscot Nation Chief and Council to include and protect all tribal officials, representatives, staff and appointed persons.

§102-A. Military orders

1. It is a defense if the person engaged in the conduct charged to constitute a crime in obedience to an order of the person's superior in the armed services that the person did not know to be unlawful.
2. If the person was reckless in failing to know the unlawful nature of such an order, the defense is unavailable in a prosecution for a crime for which recklessness suffices to establish liability.

§103. Competing harms

1. Conduct that the person believes to be necessary to avoid imminent physical harm to that person or another is justifiable if the desirability and urgency of avoiding such harm outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the statute defining the crime charged. The desirability and urgency of such conduct may not rest upon considerations pertaining to the morality and advisability of such statute.
2. When the person was reckless or criminally negligent in bringing about the circumstances requiring a choice of harms or in appraising the necessity of the person's conduct, the justification provided in subsection 1 does not apply in a prosecution for any crime for which recklessness or criminal negligence, as the case may be, suffices to establish criminal liability.

§103-A. Duress

1. It is a defense that, when a person engages in conduct that would otherwise constitute a crime, the person is compelled to do so by threat of imminent death or serious bodily injury to that person or another person or because that person was compelled to do so by force.
2. For purposes of this section, compulsion exists only if the force, threat or circumstances are such as would have prevented a reasonable person in the defendant's situation from resisting the pressure.
3. The defense set forth in this section is not available:
 - A. To a person who intentionally or knowingly committed the homicide for which the person is being tried;
 - B. To a person who recklessly placed that person in a situation in which it was reasonably probable that the person would be subjected to duress;
 - C. To a person who with criminal negligence placed that person in a situation in which it was reasonably probable that the person would be subjected to duress, whenever criminal negligence suffices to establish culpability for the offense charged.

§103-B. Involuntary conduct

1. It is a defense that, when a person causes a result or engages in forbidden conduct, the person's act or omission to act is involuntary.

2. An omission to act is involuntary if the person fails to perform an act and:
 - A. The person is not capable of performing the act;
 - B. The person has no legal duty to perform the act; or
 - C. The person has no opportunity to perform the act.
3. Possession of something is involuntary if the person:
 - A. Did not knowingly procure or receive the thing possessed; or
 - B. Was not aware of the person's control of the possession for a sufficient period to have been able to terminate the person's possession of the thing.

§104. Use of force in defense of premises

1. A person in possession or control of premises or a person who is licensed or privileged to be thereon is justified in using nondeadly force upon another person when and to the extent that the person reasonably believes it necessary to prevent or terminate the commission of a criminal trespass by such other person in or upon such premises.
2. A person in possession or control of premises or a person who is licensed or privileged to be thereon is justified in using deadly force upon another person when and to the extent that the person reasonably believes it necessary to prevent an attempt by the other person to commit arson.
3. A person in possession or control of a dwelling place or a person who is licensed or privileged to be therein is justified in using deadly force upon another person:
 - A. Under the circumstances enumerated in section 108; or
 - B. When the person reasonably believes that deadly force is necessary to prevent or terminate the commission of a criminal trespass by such other person, who the person reasonably believes:
 - (1) Has entered or is attempting to enter the dwelling place or has surreptitiously remained within the dwelling place without a license or privilege to do so; and
 - (2) Is committing or is likely to commit some other crime within the dwelling place.
4. A person may use deadly force under subsection 3, paragraph B only if the person first demands the person against whom such deadly force is to be used to terminate the criminal trespass and the trespasser fails to immediately comply with the demand, unless the person reasonably believes that it would be dangerous to the person or a 3rd person to make the demand.
5. As used in this section:
 - A. Dwelling place has the same meaning provided in section 2, subsection 10; and
 - B. Premises includes, but is not limited to, lands, private ways and any buildings or structures thereon.

§105. Use of force in property offenses

A person is justified in using a reasonable degree of nondeadly force upon another person when and to the extent that the person reasonably believes it necessary to prevent what is or reasonably appears to be an unlawful taking of the person's property, or criminal mischief, or to retake the person's property immediately following its taking; but the person may use deadly force only under such circumstances as are prescribed in sections 104, 107 and 108.

§106. Physical force by persons with special responsibilities

1. A parent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of a child is justified in using a reasonable degree of force against that child when and to the extent that the person reasonably believes it necessary to prevent or punish the child's misconduct. A person to whom such parent, foster parent, guardian or other responsible person has expressly delegated permission to so prevent or punish misconduct is similarly justified in using a reasonable degree of force. For purposes of this subsection, "child" means a person who has not

attained 18 years of age and has not been ordered emancipated by a court pursuant to Title 15, section 3506-A.

- 1-A. For purposes of subsection 1, "reasonable degree of force" is an objective standard. To constitute a reasonable degree of force, the physical force applied to the child may result in no more than transient discomfort or minor temporary marks on that child.
2. A teacher or other person entrusted with the care or supervision of a person for special and limited purposes is justified in using a reasonable degree of nondeadly force against any such person who creates a disturbance when and to the extent that the teacher or other entrusted person reasonably believes it necessary to control the disturbing behavior or to remove a person from the scene of such disturbance.
3. A person responsible for the general care and supervision of a mentally incompetent person is justified in using a reasonable degree of nondeadly force against such person who creates a disturbance when and to the extent that the responsible person reasonably believes it necessary to control the disturbing behavior or to remove such person from the scene of such disturbance.
4. The justification extended in subsections 2 and 3 does not apply to the intentional, knowing or reckless use of nondeadly force that creates a substantial risk of extraordinary pain.
5. A person required by law to enforce rules and regulations, or to maintain decorum or safety, in a vessel, aircraft, vehicle, train or other carrier, or in a place where others are assembled, may use nondeadly force when and to the extent that the person reasonably believes it necessary for such purposes.
6. A person acting under a reasonable belief that another person is about to commit suicide or to self-inflict serious bodily injury may use a degree of force on such other person as the person reasonably believes to be necessary to thwart such a result.
7. A licensed physician, or a person acting under a licensed physician's direction, may use force for the purpose of administering a recognized form of treatment that the physician reasonably believes will tend to safeguard the physical or mental health of the patient, provided such treatment is administered:
 - A. With consent of the patient or, if the patient is a minor or incompetent person, with the consent of the person entrusted with the patient's care and supervision; or
 - B. In an emergency relating to health when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person concerned for the welfare of the patient would consent.
8. A person identified in this section for purposes of specifying the rule of justification herein provided is not precluded from using force declared to be justifiable by another section of this chapter.

§107. Physical force in law enforcement

1. A law enforcement officer is justified in using a reasonable degree of nondeadly force upon another person:
 - A. When and to the extent that the officer reasonably believes it necessary to effect an arrest or to prevent the escape from custody of an arrested person, unless the officer knows that the arrest or detention is illegal; or
 - B. In self-defense or to defend a 3rd person from what the officer reasonably believes to be the imminent use of unlawful nondeadly force encountered while attempting to effect such an arrest or while seeking to prevent such an escape.
2. A law enforcement officer is justified in using deadly force only when the officer reasonably believes such force is necessary:

- A. For self-defense or to defend a 3rd person from what the officer reasonably believes is the imminent use of unlawful deadly force; or
- B. To effect an arrest or prevent the escape from arrest of a person when the law enforcement officer reasonably believes that the person has committed a crime involving the use or threatened use of deadly force, is using a dangerous weapon in attempting to escape or otherwise indicates that the person is likely to endanger seriously human life or to inflict serious bodily injury unless apprehended without delay; and
 - (1) The law enforcement officer has made reasonable efforts to advise the person that the officer is a law enforcement officer attempting to effect an arrest or prevent the escape from arrest and the officer has reasonable grounds to believe that the person is aware of this advice; or
 - (2) The law enforcement officer reasonably believes that the person to be arrested otherwise knows that the officer is a law enforcement officer attempting to effect an arrest or prevent the escape from arrest.

For purposes of this paragraph, "a reasonable belief that another has committed a crime involving use or threatened use of deadly force" means such reasonable belief in facts, circumstances and the law that, if true, would constitute such an offense by that person. If the facts and circumstances reasonably believed would not constitute such an offense, an erroneous but reasonable belief that the law is otherwise justifies the use of deadly force to make an arrest or prevent an escape.

- 3. A private person who has been directed by a law enforcement officer to assist the officer in effecting an arrest or preventing an escape from custody is justified in using:
 - A. A reasonable degree of nondeadly force when and to the extent that the private person reasonably believes such to be necessary to carry out the officer's direction, unless the private person believes the arrest is illegal; or
 - B. Deadly force only when the private person reasonably believes such to be necessary for self-defense or to defend a 3rd person from what the private person reasonably believes to be the imminent use of unlawful deadly force, or when the law enforcement officer directs the private person to use deadly force and the private person believes the officer is authorized to use deadly force under the circumstances.
- 4. A private person acting on that private person's own is justified in using:
 - A. A reasonable degree of nondeadly force upon another person when and to the extent that the private person reasonably believes it necessary to effect an arrest or detention that is lawful for the private person to make or prevent the escape from such an arrest or detention; or
 - B. Deadly force only when the private person reasonably believes such force is necessary:
 - (1) To defend the person or a 3rd person from what the private citizen reasonably believes to be the imminent use of unlawful deadly force; or
 - (2) To effect a lawful arrest or prevent the escape from such arrest of a person who in fact:
 - (a) Has committed a crime involving the use or threatened use of deadly force, or is using a dangerous weapon in attempting to escape; and
 - (b) The private citizen has made reasonable efforts to advise the person that the citizen is a private citizen attempting to effect an arrest or prevent the escape from arrest and has reasonable grounds to believe the person is aware of this advice or the citizen reasonably believes that the person to be arrested otherwise knows that the citizen is a private citizen attempting to effect an arrest or prevent the escape from arrest.
- 5. Except where otherwise expressly provided, a corrections officer, corrections supervisor or law enforcement officer in a facility where persons are confined, pursuant to an order of a court or as a result of an arrest, is justified in using deadly force against such persons under the circumstances

described in subsection 2. The officer or another individual responsible for the custody, care or treatment of those persons is justified in using a reasonable degree of nondeadly force when and to the extent the officer or the individual reasonably believes it necessary to prevent any escape from custody or to enforce the rules of the facility.

- 5-A.** A corrections officer, corrections supervisor or law enforcement officer is justified in using deadly force against a person confined in the Maine State Prison when the officer or supervisor reasonably believes that deadly force is necessary to prevent an escape from custody. The officer or supervisor shall make reasonable efforts to advise the person that if the attempt to escape does not stop immediately, deadly force will be used. This subsection does not authorize any corrections officer, corrections supervisor or law enforcement officer who is not employed by a state agency to use deadly force.
- 7. Use of force that is not justifiable under this section in effecting an arrest does not render illegal an arrest that is otherwise legal and the use of such unjustifiable force does not render inadmissible anything seized incident to a legal arrest.
- 8. Nothing in this section constitutes justification for conduct by a law enforcement officer or a private person amounting to an offense against innocent persons whom the officer or private person is not seeking to arrest or retain in custody.

§108. Physical force in defense of a person

- 1. A person is justified in using a reasonable degree of nondeadly force upon another person in order to defend the person or a 3rd person from what the person reasonably believes to be the imminent use of unlawful, nondeadly force by such other person, and the person may use a degree of such force that the person reasonably believes to be necessary for such purpose. However, such force is not justifiable if:
 - A. With a purpose to cause physical harm to another person, the person provoked the use of unlawful, nondeadly force by such other person; or
 - B. The person was the initial aggressor, unless after such aggression the person withdraws from the encounter and effectively communicates to such other person the intent to do so, but the other person notwithstanding continues the use or threat of unlawful, nondeadly force; or
 - C. The force involved was the product of a combat by agreement not authorized by law.
- 1-A.** A person is not justified in using nondeadly force against another person who that person knows or reasonably should know is a law enforcement officer attempting to effect an arrest or detention, regardless of whether the arrest or detention is legal. A person is justified in using the degree of nondeadly force the person reasonably believes is necessary to defend the person or a 3rd person against a law enforcement officer who, in effecting an arrest or detention, uses nondeadly force not justified under section 107, subsection 1.
- 2. A person is justified in using deadly force upon another person:
 - A. When the person reasonably believes it necessary and reasonably believes such other person is:
 - (1) About to use unlawful, deadly force against the person or a 3rd person; or
 - (2) Committing or about to commit a kidnapping, robbery or a violation of section 253, subsection 1, paragraph A, against the person or a 3rd person; or
 - B. When the person reasonably believes:
 - (1) That such other person has entered or is attempting to enter a dwelling place or has surreptitiously remained within a dwelling place without a license or privilege to do so; and

- (2) That deadly force is necessary to prevent the infliction of bodily injury by such other person upon the person or a 3rd person present in the dwelling place;
- C. However, a person is not justified in using deadly force as provided in paragraph A if:
 - (1) With the intent to cause physical harm to another, the person provokes such other person to use unlawful deadly force against anyone;
 - (2) The person knows that the person against whom the unlawful deadly force is directed intentionally and unlawfully provoked the use of such force; or
 - (3) The person knows that the person or a 3rd person can, with complete safety:
 - (a) Retreat from the encounter, except that the person or the 3rd person is not required to retreat if the person or the 3rd person is in the person's dwelling place and was not the initial aggressor;
 - (b) Surrender property to a person asserting a colorable claim of right thereto; or
 - (c) Comply with a demand that the person abstain from performing an act that the person is not obliged to perform.
- 3. A person is not justified in using force against another based solely on the discovery of, knowledge about or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression or sexual orientation, including under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance toward the person or in which the person and victim dated or had a romantic or sexual relationship.

§109. Consent

- 1. It is a defense that, when a defendant engages in conduct which would otherwise constitute a crime against the person or property of another, such other consented to the conduct and an element of the crime is negated as a result of such consent.
- 2. When conduct is a crime because it causes or threatens bodily injury, consent to such conduct or to the infliction of such injury is a defense only if:
 - A. Neither the injury inflicted nor the injury threatened was such as to endanger life or to cause serious bodily injury;
 - B. The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or
 - C. The conduct and the injury are reasonably foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods, and the persons subjected to such conduct or injury have been made aware of the risks involved prior to giving consent.
- 3. Consent is not a defense within the meaning of this section if:
 - A. It is given by a person who is declared by a statute or by a judicial decision to be legally incompetent to authorize the conduct charged to constitute the crime, and such incompetence is manifest or known to the actor;
 - B. It is given by a person who, by reason of intoxication, physical illness, mental illness or mental defect, including, but not limited to, dementia and other cognitive impairments, or youth, is manifestly unable, or known by the defendant to be unable, to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the crime; or
 - C. It is induced by force, duress or deception or undue influence.

4. As used in this section, "undue influence" means the misuse of real or apparent authority or the use of manipulation by a person in a trusting, confidential or fiduciary relationship with a person who is an incapacitated adult as defined in Title 22, section 3472, subsection 10 or is a dependent adult as defined in Title 22, section 3472, subsection 6 and who is wholly or partially dependent upon that person or others for care or support, either emotional or physical.

§110. Threat to use deadly force against a law enforcement officer

A person otherwise justified in threatening to use deadly force against another is not justified in doing so with the use of a firearm or other dangerous weapon if the person knows or should know that the other person is a law enforcement officer, unless the person knows that the law enforcement officer is not in fact engaged in the performance of the law enforcement officer's public duty, or unless the person is justified under this chapter in using deadly force against the law enforcement officer. A law enforcement officer may not make a nonconsensual warrantless entry into a dwelling place solely in response to a threat not justified under this section.

PART 2

SUBSTANTIVE OFFENSES

CHAPTER 7

OFFENSES OF GENERAL APPLICABILITY

§151. Criminal conspiracy

1. A person is guilty of criminal conspiracy if, with the intent that conduct be performed that in fact would constitute a crime or crimes, the actor agrees with one or more others to engage in or cause the performance of the conduct and the most serious crime that is the object of the conspiracy is:
 - C. A Class B crime. Violation of this paragraph is a Class C crime;
 - D. A Class C crime. Violation of this paragraph is a Class D crime; or
 - E. A Class D or Class E crime. Violation of this paragraph is a Class E crime.
2. If the actor knows that one with whom the actor agrees has agreed or will agree with a 3rd person to effect the same objective, the actor is deemed to have agreed with the 3rd person, whether or not the actor knows the identity of the 3rd person.
3. A person who conspires to commit more than one crime is guilty of only one conspiracy if the crimes are the object of the same agreement or continuous conspiratorial relationship.
4. A person may not be convicted of criminal conspiracy unless it is alleged and proved that the actor, or one with whom the actor conspired, took a substantial step toward commission of the crime. A substantial step is any conduct which, under the circumstances in which it occurs, is strongly corroborative of the firmness of the actor's intent to complete commission of the crime; provided that speech alone may not constitute a substantial step.
5. Accomplice liability for crimes committed in furtherance of the criminal conspiracy is to be determined by the provisions of section 57.
6. For the purpose of determining the period of limitations under section 8, the following provisions govern.
 - A. A criminal conspiracy is deemed to continue until the criminal conduct that is its object is performed, or the agreement that it be performed is frustrated or is abandoned by the actor and

by those with whom the actor conspired. For purposes of this subsection, the object of the criminal conspiracy includes escape from the scene of the crime, distribution of the fruits of the crime, and measures, other than silence, for concealing the commission of the crime or the identity of its perpetrators.

- B. If a person abandons the agreement, the criminal conspiracy terminates as to the actor only when:
 - (1) The actor informs a law enforcement officer of the existence of the criminal conspiracy and of the actor's participation therein; or
 - (2) The actor advises those with whom the actor conspired of the actor's abandonment. Abandonment is an affirmative defense.
- 7. It is not a defense to prosecution under this section that another person with whom the actor is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is not subject to prosecution as a result of immaturity, or is immune from or otherwise not subject to prosecution.
- 8. It is a defense to prosecution under this section that, had the objective of the criminal conspiracy been achieved, the actor would have been immune from liability under the law defining the offense, or as an accomplice under section 57.
- 10. It is a defense to prosecution under this section that the objective of the conspiracy is a violation of section 853-B and the actor's participation was engaging or agreeing to personally engage in a sexual act or sexual contact for pecuniary benefit.

§152. Criminal attempt

- 1. A person is guilty of criminal attempt if, acting with the kind of culpability required for the commission of the crime, and with the intent to complete the commission of the crime, the person engages in conduct that in fact constitutes a substantial step toward its commission and the crime is:
 - C. A Class B crime. Violation of this paragraph is a Class C crime;
 - D. A Class C crime. Violation of this paragraph is a Class D crime; or
 - E. A Class D crime or Class E crime. Violation of this paragraph is a Class E crime.
- A substantial step is any conduct that goes beyond mere preparation and is strongly corroborative of the firmness of the actor's intent to complete the commission of the crime.
- 2. It is not a defense to a prosecution under this section that it was impossible to commit the crime that the person attempted, provided that it would have been committed had the factual and legal attendant circumstances specified in the definition of the crime been as the person believed them to be.
- 3. A person who engages in conduct intending to aid another to commit a crime is guilty of criminal attempt if the conduct would establish the person's complicity under section 57 were the crime committed by the other person, even if the other person is not guilty of committing or attempting the crime.
- 3-A. An indictment, information or complaint, or count thereof, charging the commission of a crime under chapters 9 through 45, or a crime outside this code is deemed to charge the commission of the attempt to commit that crime and may not be deemed duplicitous thereby.

§153. Criminal solicitation

- 1. A person is guilty of criminal solicitation if the person, with the intent to cause the commission of the crime, and under circumstances that the person believes make it probable that the crime will

take place, commands or attempts to induce another person, whether as principal or accomplice, to:

C. Commit a Class B crime. Violation of this paragraph is a Class C crime.

2. It is a defense to prosecution under this section that, if the criminal object were achieved, the person would not be guilty of a crime under the law defining the crime or as an accomplice under section 57.
3. It is not a defense to a prosecution under this section that the person solicited could not be guilty of the crime because of lack of responsibility or culpability, immaturity, or other incapacity or defense.

§154. General provisions regarding chapter 7

1. It shall not be a crime to conspire to commit, or to attempt, or solicit, any crime set forth in this chapter.
2. There is an affirmative defense of renunciation in the following circumstances.
 - A. In a prosecution for attempt under section 152, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant avoided the commission of the crime attempted by abandoning his criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.
 - B. In a prosecution for solicitation under section 153, or for conspiracy under section 151, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited or of the crime contemplated by the conspiracy, as the case may be.
 - C. A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by: A belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or another participant in the criminal operation, or which makes more difficult the consummation of the crime; or a decision to postpone the criminal conduct until another time or to substitute another victim or another but similar objective.

CHAPTER 9

OFFENSES AGAINST THE PERSON

§203. Manslaughter

1. A person is guilty of manslaughter if that person:
- C. Has direct and personal management or control of any employment, place of employment or other employee, and intentionally or knowingly violates any occupational safety or health standard of this Nation or the Federal Government, and that violation in fact causes the death of an employee and that death is a reasonably foreseeable consequence of the violation. This paragraph does not apply to:
 - (1) Any person who performs a public function either on a volunteer basis or for minimal compensation for services rendered; or
 - (2) Any public employee responding to or acting at a life-threatening situation who is forced to make and does make a judgment reasonably calculated to save the life of a human being.

Violation of this paragraph is a Class C crime

§204. Aiding or soliciting suicide

1. A person is guilty of aiding or soliciting suicide if he intentionally aids or solicits another to commit suicide, and the other commits or attempts suicide.
2. Aiding or soliciting suicide is a Class D crime.
3. It is an affirmative defense to prosecution under subsection 1 that the person's conduct was expressly authorized by Title 22, chapter 418.

§207. Assault

1. A person is guilty of assault if:
 - A. The person intentionally, knowingly or recklessly causes bodily injury or offensive physical contact to another person. Violation of this paragraph is a Class D crime;
 - B. The person has attained at least 18 years of age and intentionally, knowingly or recklessly causes bodily injury to another person who is less than 6 years of age. Violation of this paragraph is a Class C crime.
3. For a violation under subsection 1, the court shall impose a sentencing alternative that involves a fine of not less than \$300, which may not be suspended except as provided in subsection 4.
4. **Finding by court necessary to impose other than minimum fine.** In the case of an individual, the court may suspend all or a portion of a minimum fine under subsection 3 or impose a lesser fine other than the mandatory fine if the court finds by a preponderance of the evidence that there are exceptional circumstances that justify imposition of a lesser financial penalty. In making a finding of exceptional circumstances, the court may consider:
 - A. Reliable evidence of financial hardship on the part of the individual and the individual's family and dependents
 - B. Reliable evidence of special needs of the individual or the individual's family and dependents;
 - C. Reliable evidence of the individual's income and future earning capacity and the individual's assets and financial resources from whatever source;
 - D. Reliable evidence regarding any pecuniary gain derived from the commission of the offense; and

- E. The impact of imposition of the mandatory fine on the individual's reasonable ability to pay restitution under chapter 69.

§207-A. Domestic violence assault

1. A person is guilty of domestic violence assault if:
 - A. The person violates section 207 and the victim is a family or household member as defined in Title 19-A, section 4102, subsection 6 or a dating partner as defined in Title 19-A, section 4102, subsection 4. Violation of this paragraph is a Class D crime; or
 - B. The person violates paragraph A and at the time of the offense:
 - (1) Has one or more prior convictions for violating paragraph A or for violating section 208-D, 208-E, 208-F, 209-A, 210-B, 210-C or 211-A or one or more prior convictions for engaging in conduct substantially similar to that contained in paragraph A or in section 208-D, 208-E, 208-F, 209-A, 210-B, 210-C or 211-A in another jurisdiction;
 - (2) Has one or more prior convictions for violating Title 19-A, former section 4011, subsection 1 or Title 19-A, section 4113, subsection 1 or one or more prior convictions for engaging in conduct substantially similar to that contained in Title 19-A, section 4113, subsection 1 in another jurisdiction;
 - (3) Has one or more prior convictions for violating Title 15, section 1092, subsection 1, paragraph B when the condition of release violated is specified in Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or (8) when the alleged victim in the case for which the defendant was on bail was a family or household member as defined in Title 19-A, section 4102, subsection 6 or a dating partner as defined in Title 19-A, section 4102, subsection 4; or
 - (4) Has one or more prior convictions for violating section 208, 208-B or 208-C, and the Nation had pled and proved that the victim of the applicable prior conviction was a family or household member, as defined in Title 19-A, section 4102, subsection 6, or a dating partner, as defined in Title 19-A, section 4102, subsection 4, or has one or more prior convictions in another jurisdiction for engaging in conduct substantially similar to that contained in section 208, 208-B or 208-C and it had been pled and proved that the victim was a family or household member or a dating partner.
- Violation of this paragraph is a Class C crime
2. Section 9-A governs the use of prior convictions when determining a sentence.

§208-A. Assault while hunting

1. A person is guilty of assault while hunting if, while in the pursuit of wild game or game birds, he, with criminal negligence, causes bodily injury to another with the use of a dangerous weapon.
2. Assault while hunting is a Class D crime.

§209. Criminal threatening

1. A person is guilty of criminal threatening if he intentionally or knowingly places another person in fear of imminent bodily injury.
2. Criminal threatening is a Class D crime.

§210. Terrorizing

1. A person is guilty of terrorizing if that person intentionally, knowingly or recklessly communicates to any person a threat to commit or to cause to be committed a crime of violence dangerous to human life, against the person to whom the communication is made or another, consciously disregarding a substantial risk that the natural and probable consequence of such a threat, whether or not such consequence in fact occurs, is:
 - A. To place the person to whom the threat is communicated or the person threatened in reasonable fear that the crime will be committed. Violation of this paragraph is a Class D crime; or

- B. To cause evacuation of a building, place of assembly or facility of public transport or to cause the occupants of a building to be moved to or required to remain in a designated secured area. Violation of this paragraph is a Class C crime.

§211. Reckless conduct

1. A person is guilty of reckless conduct if he recklessly creates a substantial risk of serious bodily injury to another person.
2. Reckless conduct is a Class D crime.

CHAPTER 11

SEXUAL ASSAULTS

CHAPTER 13

KIDNAPPING, CRIMINAL RESTRAINT AND CRIMINAL FORCED LABOR

§302. Criminal restraint

1. A person is guilty of criminal restraint if:
 - A. Knowing the actor has no legal right to do so, the actor intentionally or knowingly takes, retains or entices another person who:
 - (1) Is less than 14 years of age. Violation of this subparagraph is a Class D crime;
 - (2) Is incompetent. Violation of this subparagraph is a Class D crime;
 - (3) Is either 14, 15 or 16 years of age from the custody of the other person's parent, guardian or other lawful custodian, with the intent to hold the other person permanently or for a prolonged period and the actor is at least 18 years of age. Violation of this subparagraph is a Class D crime; or
 - (4) Is in fact less than 8 years of age. Violation of this subparagraph is a Class C crime; or
 - B. The actor:
 - (1) Knowingly restrains another person. Violation of this subparagraph is a Class D crime; or
 - (2) Knowingly restrains another person who is in fact less than 8 years of age. Violation of this subparagraph is a Class C crime.

As used in this paragraph, "restrain" has the same meaning as in section 301, subsection 2.
2. It is a defense to a prosecution under this section that the actor is the parent of the other person taken, retained, enticed or restrained. Consent by the person taken, retained or enticed is not a defense to a prosecution under subsection 1, paragraph A.

§303. Criminal restraint by parent

1. A person is guilty of criminal restraint by a parent if, being the parent of a child and knowing the person has no legal right to do so, the person takes, retains or entices the child:
 - A. Who has not in fact attained 16 years of age, from the custody of the child's other parent, guardian or other lawful custodian with the intent to remove the child from the Nation or to secrete the child and hold the child in a place where the child is not likely to be found. Violation of this paragraph is a Class C crime;
 - B. Who resides in another state and who has not in fact attained 16 years of age, from the custody of the child's other parent, guardian or other lawful custodian, whose custodial authority was established by a court of this Nation, with the intent to remove the child from that state or to

secrete the child and hold the child in a place where the child is not likely to be found. Violation of this paragraph is a Class C crime; or

- C. Who is either 16 or 17 years of age, from the custody of the Department of Corrections or the Department of Health and Human Services with the intent to remove the child from the Nation or to secrete the child and hold the child in a place where the child is not likely to be found. Violation of this paragraph is a Class D crime.

Official Note for Section 303

- 1. Section 303 of this section: "Department of Health and Human Services" adopted by the Penobscot Nation Chief and Council to include Penobscot Indian Nation Department of Social Services.

- 2. Consent by the child taken, enticed or retained is not a defense under this section.

- 3. A law enforcement officer may not be held liable for taking physical custody of a child who the officer reasonably believes has been taken, retained or enticed in violation of this section and for delivering the child to a person who the officer reasonably believes is the child's lawful custodian or to any other suitable person.

For purposes of this subsection, "reasonable belief a child has been taken, retained or enticed in violation of this section" includes, but is not limited to, a determination by a law enforcement officer, based on the officer's review of the terms of a certified copy of the most recent court decree granting custody of the child, that the parent who is exercising control over the child is not the person authorized to have custody under terms of the decree.

- 4. A law enforcement officer may arrest without a warrant any person who the officer has probable cause to believe has violated or is violating this section.

§304. Criminal forced labor

- 1. A person is guilty of criminal forced labor if the actor, without the legal right to do so, intentionally or knowingly:
 - A. Withholds or threatens to withhold a scheduled drug or alcohol from a person who is in a state of psychic or physical dependence, or both, arising from the use of the drug or alcohol on a continuing basis in order to compel that person to provide labor or services having economic value;
 - B. Withholds or threatens to withhold a substance or medication from a person who has a prescription or medical need for the substance or medication in order to compel that person to provide labor or services having economic value;
 - C. Uses a person's physical or mental impairment that has substantial adverse effects on that person's cognitive or volitional functions as a means to compel that person to provide labor or services having economic value;
 - D. Makes material false statements, misstatements or omissions in order to compel a person to provide labor or services having economic value;
 - E. Withholds, destroys or confiscates an actual or purported passport or other immigration document or other actual or purported government identification document in order to compel a person to provide labor or services having economic value;
 - F. Compels a person to provide labor or services having economic value to retire, repay or service an actual or purported debt if:
 - (1) The reasonable value of the labor or services is not applied toward the liquidation of the debt; or

- (2) The length of labor or services is not limited and the nature of the labor or services is not defined; or
- G. Uses force or engages in any scheme, plan or pattern to instill in a person a fear that, if that person does not provide labor or services having economic value, the actor or another person will:
 - (1) Cause physical injury to or death of a person;
 - (2) Cause destruction of or consequential damage to property, other than property of the actor;
 - (3) Engage in other conduct constituting a Class A, B or C crime or criminal restraint;
 - (4) Accuse a person of a crime or cause criminal charges or deportation proceedings to be instituted against a person;
 - (5) Expose a secret or publicize an asserted fact, regardless of veracity, that would subject a person, except the actor, to hatred, contempt or ridicule;
 - (6) Testify or provide information or withhold testimony or information regarding a person's legal claim or defense;
 - (7) Use a position as a public servant to perform some act related to an official duty or fail or refuse to perform an official duty in a manner that affects a person; or
 - (8) Perform any other act that would not in itself materially benefit the actor but that is calculated to harm the person being compelled with respect to that person's health, safety or immigration status.
- 2. Criminal forced labor is a Class C crime.
- 3. It is an affirmative defense to prosecution under this section that the person engaged in criminal forced labor because the person was compelled to do so as described in subsection 1.

CHAPTER 15

THEFT

§351. Consolidation

Conduct denominated theft in this chapter constitutes a single crime embracing the separate crimes such as those heretofore known as larceny, larceny by trick, larceny by bailee, embezzlement, false pretenses, extortion, blackmail, shoplifting and receiving stolen property. An accusation of theft may be proved by evidence that it was committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the complaint, information or indictment, subject only to the power of the court to ensure a fair trial by granting a continuance or other appropriate relief if the conduct of the defense would be prejudiced by lack of fair notice or by surprise. If the evidence is sufficient to permit a finding of guilt of theft in more than one manner, no election among those manners is required.

§352. Definitions

As used in this chapter, unless a different meaning is plainly required by the context:

1. "Property" means anything of value, including but not limited to:
 - A. Real estate and things growing thereon, affixed to or found thereon;
 - B. Tangible and intangible personal property;
 - C. Captured or domestic animals, birds or fishes;
 - D. Written instruments, including credit cards, or other writings representing or embodying rights concerning real or personal property, labor, services or otherwise containing anything of value to the owner;
 - E. Commodities of a public utility nature such as telecommunications, gas, electricity, steam or water; and
 - F. Trade secrets, meaning the whole or any portion of any scientific or technical information, design, process, procedure, formula or invention which the owner thereof intends to be available only to persons selected by the owner.
2. "Obtain" means:
 - A. In relation to property, to bring about, in or out of this Nation, a transfer of possession or of some other legally recognized interest in property, whether to the obtainer or another;
 - B. In relation to labor or services, to secure performance of labor or services; and
 - C. In relation to a trade secret, to make any facsimile, replica, photograph or other reproduction.
3. "Intent to deprive" means to have the conscious object:
 - A. To withhold property permanently or for so extended a period or to use under such circumstances that a substantial portion of its economic value, or the use and benefit of the property, would be lost; or
 - B. To restore the property only upon payment of a reward or other compensation; or
 - C. To use or dispose of the property under circumstances that make it unlikely that the owner will recover it or that manifest an indifference as to whether the owner will recover it.
4. "Property of another" includes property in which any person or government other than the actor has an interest that the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in the possession of the actor may not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.
5. The meaning of "value" must be determined according to the following.

- A. Except as otherwise provided in this subsection, value means the market value of the property or services at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property or services within a reasonable time after the crime.
- B. The value of a written instrument that does not have a readily ascertainable market value, in the case of an instrument such as a check, draft or promissory note, is deemed the amount due or collectible on the instrument, and, in the case of any other instrument that creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation, is deemed the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.
- C. The value of a trade secret that does not have a readily ascertainable market value is deemed any reasonable value representing the damage to the owner suffered by reason of losing an advantage over those who do not know of or use the trade secret.
- D. If the value of property or services cannot be ascertained beyond a reasonable doubt pursuant to the standards set forth in paragraphs A to C, the trier of fact may find the value to be not less than a certain amount, and if no such minimum value can be thus ascertained, the value is deemed to be an amount less than \$500.
- E. Amounts of value involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated to charge a single theft of appropriate class or grade. Subject to the requirement that the conduct of the defense may not be prejudiced by lack of fair notice or by surprise, the court may at any time order that a single aggregated count be considered as separate thefts. An aggregated count of theft may not be deemed duplicitous because of such an order and an election may not be required. Prosecution may be brought in any venue in which one of the thefts that have been aggregated was committed.
- F. The actor's culpability as to value is not an essential requisite of liability, unless otherwise expressly provided.

§353. Theft by unauthorized taking or transfer

- 1. A person is guilty of theft if:
 - A. The person obtains or exercises unauthorized control over the property of another with intent to deprive the other person of the property. Violation of this paragraph is a Class E crime;
 - B. The person violates paragraph A and:
 - (4) The value of the property is more than \$1,000 but not more than \$10,000. Violation of this subparagraph is a Class C crime;
 - (5) The value of the property is more than \$500 but not more than \$1,000. Violation of this subparagraph is a Class D crime; or
 - (6) The person has 2 or more prior convictions for any combination of the Penobscot Nation or Maine offenses listed in this subparagraph or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this subparagraph in another jurisdiction. The Penobscot Nation or Maine offenses are: theft; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702, 703 or 708; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime; or
 - C. The person knowingly operates an audiovisual or audio recording function of any device in a motion picture theater while a motion picture is being exhibited for the purpose of making a copy of the motion picture, without the written consent of the motion picture theater owner. Violation of this paragraph is a Class D crime.

2. As used in this section, "exercises unauthorized control" includes but is not limited to conduct formerly defined or known as common law larceny by trespassory taking, larceny by conversion, larceny by bailee and embezzlement.

§354. Theft by deception

1. A person is guilty of theft if:
 - A. The person obtains or exercises control over property of another as a result of deception and with intent to deprive the other person of the property. Violation of this paragraph is a Class E crime; or
 - B. The person violates paragraph A and:
 - (4) The value of the property is more than \$1,000 but not more than \$10,000. Violation of this subparagraph is a Class C crime;
 - (5) The value of the property is more than \$500 but not more than \$1,000. Violation of this subparagraph is a Class D crime; or
 - (6) The person has 2 or more prior convictions for any combination of the Penobscot Nation or Maine offenses listed in this subparagraph or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this subparagraph in another jurisdiction. The Penobscot Nation or Maine offenses are: theft; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702, 703 or 708; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime.
2. For purposes of this section, deception occurs when a person intentionally:
 - A. Creates or reinforces an impression that is false and that the person does not believe to be true, including false impressions that the person is a veteran or a member of the Armed Forces of the United States or a state military force and false impressions as to identity, law, value, knowledge, opinion, intention or other state of mind; except that an intention not to perform a promise, or knowledge that a promise will not be performed, may not be inferred from the fact alone that the promise was not performed;
 - B. Fails to correct an impression that is false and that the person does not believe to be true and that:
 - (1) The person had previously created or reinforced; or
 - (2) The person knows to be influencing another whose property is involved and to whom the person stands in a fiduciary or confidential relationship;
 - C. Prevents another from acquiring information that is relevant to the disposition of the property involved; or
 - D. Fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property that the person transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of official record.
3. It is not a defense to a prosecution under this section that the deception related to a matter that was of no pecuniary significance or that the person deceived acted unreasonably in relying on the deception.

§354-A. Insurance deception

1. A person is guilty of theft if:
 - A. The person obtains or exercises control over property of another as a result of insurance deception and with an intent to deprive the other person of the property. Violation of this paragraph is a Class E crime; or
 - B. The person violates paragraph A and:

- (4) The value of the property is more than \$1,000 but not more than \$10,000. Violation of this subparagraph is a Class C crime;
 - (5) The value of the property is more than \$500 but not more than \$1,000. Violation of this subparagraph is a Class D crime; or
 - (6) The person has 2 or more prior convictions for any combination of the Penobscot Nation or Maine offenses listed in this subparagraph or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this subparagraph in another jurisdiction. The Penobscot Nation or Maine offenses are: theft; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702, 703 or 708; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime.
- 2. For purposes of this section, insurance deception occurs when a person intentionally makes a misrepresentation or written false statement that the person does not believe to be true relating to a material fact to any person engaged in the business of insurance concerning any of the following:
 - A. An application for the issuance or renewal of an insurance policy;
 - B. The rating of an insurance policy;
 - C. Payment made in accordance with an insurance policy;
 - D. A claim for payment or benefit pursuant to an insurance policy; or
 - E. Premiums paid on an insurance policy.
 - 3. It is not a defense to a prosecution under this section that the deception related to a matter that was of no pecuniary significance or that the person deceived acted unreasonably in relying on the deception.

§355. Theft by extortion

- 1. A person is guilty of theft if the person obtains or exercises control over the property of another as a result of extortion and with intent to deprive the other person of the property.
- 2. As used in this section, extortion occurs when a person threatens to:
 - A. Cause physical harm in the future to the person threatened or to any other person or to property at any time; or
 - B. Do any other act that would not in itself substantially benefit the person but that would harm substantially any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation or personal relationships.
- 3. Violation of this section is a Class C crime.

§356-A. Theft of lost, mislaid or mistakenly delivered property

- 1. A person is guilty of theft if:
 - A. The person obtains or exercises control over the property of another that the person knows to have been lost or mislaid or to have been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property and, with the intent to deprive the owner of the property at any time subsequent to acquiring it, the person fails to take reasonable measures to return it. Violation of this paragraph is a Class E crime; or
 - B. The person violates paragraph A and:
 - (4) The value of the property is more than \$1,000 but not more than \$10,000. Violation of this subparagraph is a Class C crime;
 - (5) The value of the property is more than \$500 but not more than \$1,000. Violation of this subparagraph is a Class D crime; or
 - (6) The person has 2 or more prior convictions for any combination of the Penobscot Nation or Maine offenses listed in this subparagraph or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this subparagraph in

another jurisdiction. The Penobscot Nation or Maine offenses are: theft; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702, 703 or 708; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime.

§357. Theft of services

1. A person is guilty of theft if:
 - A. The person obtains services by deception, threat, force or any other means designed to avoid the due payment for the services that the person knows are available only for compensation. Violation of this paragraph is a Class E crime; or
 - B. The person violates paragraph A and:
 - (3) The value of the services is more than \$1,000 but not more than \$10,000. Violation of this subparagraph is a Class C crime;
 - (4) The value of the services is more than \$500 but not more than \$1,000. Violation of this subparagraph is a Class D crime; or
 - (5) The person has 2 or more prior convictions for any combination of the Penobscot Nation or Maine offenses listed in this subparagraph or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this subparagraph in another jurisdiction. The Penobscot Nation or Maine offenses are: theft; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702, 703 or 708; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime.
2. A person is guilty of theft if:
 - A. Having control over the disposition of services of another, to which the person knows the person is not entitled, the person diverts such services to the person's own benefit or to the benefit of some other person who the person knows is not entitled to the services. Violation of this paragraph is a Class E crime; B. The person violates paragraph A and:
 - (3) The value of the services is more than \$1,000 but not more than \$10,000. Violation of this subparagraph is a Class C crime;
 - (4) The value of the services is more than \$500 but not more than \$1,000. Violation of this subparagraph is a Class D crime; or
 - (5) The person has 2 or more prior convictions for any combination of the Penobscot Nation or Maine offenses listed in this subparagraph or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this subparagraph in another jurisdiction. The Penobscot Nation or Maine offenses are: theft; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702, 703 or 708; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime.
3. As used in this section:
 - A. "Deception" has the same meaning as in section 354;
 - B. "Services" includes, but is not limited to, labor; professional service; public utility service; transportation service; ski-lift service; restaurant, hotel, motel, tourist cabin, rooming house and like accommodations; the supplying of equipment, tools, vehicles or trailers for temporary use; telephone, cellular telephone, telegraph, cable television or computer service; gas,

electricity, water or steam; admission to entertainment, exhibitions, sporting events or other events; or other services for which a charge is made; and

C. "Threat" is deemed to occur under the circumstances described in section 355, subsection 2.

4. When compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels, restaurants, ski lifts, garages or sporting events, nonpayment prior to use or enjoyment, refusal to pay or absconding without payment or offer to pay gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the service was obtained by deception.
5. Proof that utility services or electricity services have been improperly diverted or that devices belonging to the utility or electricity service provider and installed for the delivery, regulation or measurement of utility services or electricity services have been interfered with gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person to whom the utility service or electricity service is being delivered or diverted knowingly created or caused to be created the improper diversion or interference with the devices of the utility or electricity service provider.

This inference does not apply unless the person to whom the utility service or electricity service is being delivered has been furnished the service for at least 30 days.

For purposes of this subsection, "electricity service" means electric billing and metering services, as defined in Title 35-A, section 3201, subsection 8, and the service of a competitive electricity provider, as defined in Title 35-A, section 3201, subsection 5.

§358. Theft by misapplication of property

1. A person is guilty of theft if:
 - A. The person obtains property from anyone or personal services from an employee upon agreement, or subject to a known legal obligation, to make a specified payment or other disposition to a 3rd person or to a fund administered by that person, whether from that property or its proceeds or from that person's own property to be reserved in an equivalent or agreed amount, if that person intentionally or recklessly fails to make the required payment or disposition and deals with the property obtained or withheld as that person's own. Violation of this paragraph is a Class E crime; or
 - B. The person violates paragraph A and:
 - (5) The value of the property is more than \$1,000 but not more than \$10,000. Violation of this subparagraph is a Class C crime;
 - (6) The value of the property is more than \$500 but not more than \$1,000. Violation of this subparagraph is a Class D crime;
 - (7) The value of the property is more than \$1,000 but not more than \$2,000 and the person is a payroll processor. Violation of this subparagraph is a Class C crime;
 - (9) The person has 2 or more prior convictions for any combination of the Penobscot Nation or Penobscot Nation or Maine offenses listed in this subparagraph or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this subparagraph in another jurisdiction. The Penobscot Nation or Maine offenses are: theft; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702, 703 or 708; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime.
2. Liability under subsection 1 is not affected by the fact that it may be impossible to identify particular property as belonging to the victim at the time of the failure to make the required payment or disposition.
3. Proof that a person is an officer or employee of the government or of a financial institution gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person:

- A. Knows of any legal obligation relevant to the person's liability under this section; and
 - B. Dealt with the property as the person's own if the person fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of the person's accounts.
4. "Payroll processor" has the same meaning as in Title 10, section 1495.

§359. Receiving stolen property

1. A person is guilty of theft if:
 - A. The person receives, retains or disposes of the property of another knowing that it has been stolen, or believing that it has probably been stolen, with the intent to deprive the owner of the property. Violation of this paragraph is a Class E crime; or
 - B. The person violates paragraph A and:
 - (4) The value of the property is more than \$1,000 but not more than \$10,000. Violation of this subparagraph is a Class C crime;
 - (5) The value of the property is more than \$500 but not more than \$1,000. Violation of this subparagraph is a Class D crime; or
 - (6) The person has 2 or more prior convictions for any combination of the Penobscot Nation or Maine offenses listed in this subparagraph or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this subparagraph in another jurisdiction. The Penobscot Nation or Maine offenses are: theft; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702, 703 or 708; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime.
2. As used in this section, "receives" means acquiring possession, control or title, or lending on the security of the property. For purposes of this section, property is "stolen" if it was obtained or unauthorized control was exercised over it in violation of this chapter.

§360. Unauthorized use of property

1. A person is guilty of theft if:
 - A. Knowing that the person does not have the consent of the owner, the person takes, operates or exercises control over a vehicle, or, knowing that a vehicle has been so wrongfully obtained, the person rides in the vehicle. Violation of this paragraph is a Class D crime;
 - A-1. The person violates paragraph A and the person has 2 or more prior convictions for any combination of the Penobscot Nation or Maine offenses listed in this paragraph or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this paragraph in another jurisdiction. The Penobscot Nation or Maine offenses are: theft; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702, 703 or 708; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime;
 - B. Having custody of a vehicle pursuant to an agreement between the person and the owner of the vehicle whereby the person or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of the vehicle, the person intentionally uses or operates the vehicle, without the consent of the owner, for the person's own purposes in a manner constituting a gross deviation from the agreed purpose. Violation of this paragraph is a Class D crime;
 - B-1. The person violates paragraph B and the person has 2 or more prior convictions for any combination of the Penobscot Nation or Maine offenses listed in this paragraph or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this

paragraph in another jurisdiction. The Penobscot Nation or Maine offenses are: theft; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702, 703 or 708; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime;

- C. Having custody of property pursuant to a rental or lease agreement with the owner of the property or a borrower's agreement with a library or museum whereby the property is to be returned to the owner at a specified time and place, the person knowingly fails to comply with the agreed terms concerning return of such property without the consent of the owner, for so lengthy a period beyond the specified time for return as to render the retention or possession or other failure to return a gross deviation from the agreement. For purposes of this paragraph, proof that the person fails to return the property within 5 days of receiving a written demand from the owner, mailed by certified or registered mail or delivered by hand after the expiration of the rental period to the most current address known to the owner, gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 of a gross deviation from the agreement. Violation of this paragraph is a Class D crime; or
 - D. The person violates paragraph C and the person has 2 or more prior convictions for any combination of the Penobscot Nation or Maine offenses listed in this paragraph or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this paragraph in another jurisdiction. The Penobscot Nation or Maine offenses are: theft; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702, 703 or 708; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime.
- 2. As used in this section, "vehicle" means any automobile, airplane, motorcycle, motorboat, snowmobile, any other motor-propelled means of transportation, or any boat or vessel propelled by sail, oar or paddle.
 - 3. It is a defense to a prosecution under this section that the person reasonably believed that the owner would have consented to the person's conduct had the owner known of it.

§361. Affirmative defense of claim of right

It is an affirmative defense to prosecution under this chapter that the defendant acted in good faith under a claim of right to property or services involved, including, in cases of theft of a trade secret, that the defendant rightfully knew the trade secret or that it was available to the defendant from a source other than the owner of the trade secret.

§361-A. Permissible inferences against accused

- 1. Proof that the defendant was in exclusive possession of property that had recently been taken under circumstances constituting a violation of this chapter, section 405 or of chapter 27 gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the defendant is guilty of the theft or robbery of the property, as the case may be, and proof that the theft or robbery occurred under circumstances constituting a violation of section 401 or 405 also gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the defendant in exclusive possession of property recently so taken is guilty of the burglary or burglary of a motor vehicle, as the case may be.
- 2. Proof that the defendant concealed unpurchased property stored, offered or exposed for sale while the defendant was still on the premises of the place where it was stored, offered or exposed or in a parking lot or public or private way immediately adjacent thereto gives rise to a permissible

inference under the Maine Rules of Evidence, Rule 303 that the defendant obtained or exercised unauthorized control over the property with the intent to deprive the owner thereof.

3. Proof that a defendant possessed or controlled property of a person who, by reason of physical illness or mental illness or mental defect, including, but not limited to, dementia and other cognitive impairments, is manifestly unable or known by the defendant to be unable to make a reasonable judgment with respect to the disposition of the property or proof that a defendant obtained possession or control of the property by undue influence gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the defendant obtained or exercised unauthorized control over the property with the intent to deprive the owner of the property. As used in this subsection, "undue influence" has the same meaning as in section 109, subsection 4.

§363. Organized retail theft

1. A person is guilty of organized retail theft if the person commits 2 or more thefts of retail merchandise under this chapter, either as a principal or an accomplice, pursuant to a scheme or course of conduct engaged in by 2 or more persons involving thefts from 2 or more retail stores for the purpose of selling the stolen merchandise or conducting fraudulent returns of the stolen merchandise. Violation of this section is a Class C crime.

CHAPTER 17

BURGLARY AND CRIMINAL TRESPASS

§401. Burglary

1. A person is guilty of burglary if:
 - A. The person enters or surreptitiously remains in a structure knowing that that person is not licensed or privileged to do so, with the intent to commit a crime therein. Violation of this paragraph is a Class C crime;
3. A person may be convicted both of burglary and of the crime that the person committed or attempted to commit after entering or remaining in the structure, but sentencing for both crimes is governed by section 1608.

§402. Criminal trespass

1. A person is guilty of criminal trespass if, knowing that that person is not licensed or privileged to do so, that person:
 - A. Enters any dwelling place. Violation of this paragraph is a Class D crime;
 - B. Enters any structure that is locked or barred. Violation of this paragraph is a Class E crime;
 - C. Enters any place from which that person may lawfully be excluded and that is posted in accordance with subsection 4 or in a manner reasonably likely to come to the attention of intruders or that is fenced or otherwise enclosed in a manner designed to exclude intruders. Violation of this paragraph is a Class E crime;
 - D. Remains in any place in defiance of a lawful order to leave that was personally communicated to that person by the owner or another authorized person. Violation of this paragraph is a Class E crime;
 - E. Enters any place in defiance of a lawful order not to enter that was personally communicated to that person by the owner or another authorized person. Violation of this paragraph is a Class E crime; or
 - F. Enters or remains in a cemetery or burial ground at any time between 1/2 hour after sunset and 1/2 hour before sunrise the following day, unless that person enters or remains during hours in which visitors are permitted to enter or remain by municipal ordinance or, in the case of a

privately owned and operated cemetery, by posting. Violation of this paragraph is a Class E crime.

4. For the purposes of subsection 1, paragraph C, property is posted if it is marked with signs or paint in compliance with this subsection. Proof that any posted sign or paint marking is actually seen by an intruder gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that such posted sign or paint marking is posted in a manner reasonably likely to come to the attention of intruders.
 - A. Signs must indicate that access is prohibited, that access is prohibited without permission of the landowner or the landowner's agent, or that access for a particular purpose is prohibited.
 - B-1. Paint markings made pursuant to this paragraph mean that access is prohibited without permission of the landowner or the landowner's agent. Paint markings made pursuant to this paragraph must consist of a conspicuous vertical line at least one inch in width and at least 8 inches in length and must be placed so that the bottoms of the marks are not less than 3 feet from the ground or more than 5 feet from the ground at locations that are readily visible to any person approaching the property and no more than 100 feet apart. Paint markings may be placed on trees, posts or stones as described in this paragraph. The Department of Agriculture, Conservation and Forestry, Bureau of Forestry shall adopt rules to determine the color and type of paint that may be used to post property pursuant to this paragraph. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A
 - C. Signs or paint must mark the property at intervals no greater than 100 feet and at all vehicular access entries from a public road.
 - D. Signs or paint markings are required only on the portion of the property where access is prohibited or limited. Signs or paint posted in accordance with this section have no effect on boundaries of property and do not constitute claims of possession or adverse use in accordance with state law.
 - D-1. Notwithstanding any other provision of this section, a landowner who posts that landowner's land by paint markings and who intends to prohibit access without permission of the landowner or the landowner's agent or intends to prohibit access for a particular purpose may do this by posting in a prominent place one or more qualifying signs that by words or symbols set forth the nature of the prohibition. The landowner need not post the qualifying signs at 100-foot intervals.
 - E. A person commits criminal mischief and is subject to prosecution under section 806 if that person, without permission of the owner or owner's agent:
 - (1) Knowingly posts the property of another with a sign or paint mark indicating that access is prohibited, that access is prohibited without permission or that access for a particular purpose is prohibited; or
 - (2) Removes, mutilates, defaces or destroys a sign or paint mark placed for purposes of this section.
- Nothing in this subsection limits any manner of posting reasonably likely to come to the attention of intruders.

§402-A. Aggravated criminal trespass

1. A person is guilty of aggravated criminal trespass if, knowing that that person is not licensed or privileged to do so, that person enters a dwelling place and:
 - A. While in the dwelling place violates any provision of chapter 9 or chapter 11; or
 - B. At the time of the offense, the person has 2 or more prior convictions for any combination of the Penobscot Nation or Maine offenses listed in this paragraph or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this paragraph in another jurisdiction. The Penobscot Nation or Maine offenses are: burglary in a dwelling place or criminal trespass in a dwelling place. Section 9-A governs the use of prior convictions when determining a sentence.

2. Aggravated criminal trespass is a Class C crime.

§403. Possession or transfer of burglar's tools

1. A person is guilty of possession or transfer of burglar's tools if that person:
 - A. Possesses or makes any tool, implement, instrument or other article that is adapted, designed or commonly used for advancing or facilitating crimes involving unlawful entry into property or crimes involving forcible breaking of safes or other containers or depositories of property, including, but not limited to, an electronic device used as a code grabber or a master key designed to fit more than one lock, with intent to use such tool, implement, instrument or other article to commit any such criminal offense. Violation of this paragraph is a Class E crime; or
 - B. Transfers or possesses with the intent to transfer any device described in paragraph A that that person knows is designed or primarily useful for the commission of a crime described in paragraph A. Violation of this paragraph is a Class D crime.

§404. Trespass by motor vehicle

1. A person is guilty of trespass by motor vehicle if, knowing that that person has no right to do so, that person intentionally or knowingly permits a motor vehicle belonging to that person or subject to that person's control to enter or remain in or on:
 - A. The residential property of another;
 - B. The nonresidential property of another for a continuous period in excess of 24 hours; or
 - C. The nonresidential property of another that is:
 - (1) Posted in accordance with section 402, subsection 4;
 - (2) Posted to prohibit access by motor vehicles; or
 - (3) Posted in a manner reasonably likely to come to the attention of intruders.For purposes of this paragraph, property is posted to prohibit access by motor vehicles if the property owner or the owner's agent has posted the property boundaries at points where they are crossed by roads or trails with signs indicating that motor vehicle access is prohibited or with paint markings that comply with section 402, subsection 4, paragraph B.
2. Proof that the defendant was the registered owner of the vehicle gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the defendant was the person who permitted the vehicle to enter or remain on the property.
3. Trespass by motor vehicle is a Class E crime.

§405. Burglary of motor vehicle

1. A person is guilty of burglary of a motor vehicle if:
 - A. The person enters a motor vehicle, knowing that the person is not licensed or privileged to do so, with the intent to commit a crime therein. Violation of this paragraph is a Class D crime; or
 - B. The person violates paragraph A, and the person forcibly enters a motor vehicle that is locked. Violation of this paragraph is a Class C crime.
- 2-A. As used in subsection 1, "forcibly" means with the use of a burglar's tool or by the use of physical force that damages or destroys the motor vehicle. "Burglar's tool" means any device described in section 403, subsection 1, paragraph A.

CHAPTER 18

COMPUTER CRIMES

§431. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. "Access" means to gain logical entry into, instruct, communicate with, store data in or retrieve data from any computer resource.
2. "Computer" means an electronic, magnetic, optical, electrochemical or other high-speed data processing device performing logical, arithmetic or storage functions and includes any data storage device or communications facility directly related to or operating in conjunction with the device.
3. "Computer information" means a representation of information, knowledge, facts, concepts or instructions that are confidential or proprietary, are being prepared or have been prepared from an organized set of data and are located in computer memory or on magnetic, optical or mechanical media transferable directly to or useable directly by a computer as a source of data or instructions.
4. "Computer network" means a combination of one or more computers and communication facilities with the capability to transmit information among the devices or computers.
5. "Computer program" means an ordered set of data representing coded instructions or statements that, when executed by a computer, cause the computer to process data.
6. "Computer software" means a set of computer programs, procedures and associated documentation used in the operation of a computer system.
7. "Computer system" means any combination of a computer or computers with the documentation, computer software or physical facilities supporting the computer.
8. "Computer resource" means a computer program, computer software, computer system, computer network, computer information or any combination thereof.
9. "Computer virus" means any computer instruction, information, data or program that degrades the performance of a computer resource; disables, damages or destroys a computer resource; or attaches itself to another computer resource and executes when the host computer program, data or instruction is executed or when some other event takes place in the host computer resource, data or instruction.
- 9-A. "Criminal justice agency" means a governmental agency of the Nation or any subunit of a governmental agency of the Nation at any governmental level that performs the administration of criminal justice pursuant to statute. "Criminal justice agency" includes the Department of the Attorney General and district attorneys' offices. As used in this subsection, "administration of criminal justice" means activities relating to the investigation of all or specific crimes and the prosecution of offenders.
10. "Damage" means to destroy, alter, disrupt, delete, add, modify, or rearrange any computer resource by any means.
- 10-A. "Data storage device" means any computer or accessory device, designed for or capable of storing digital media or data, including, but not limited to, installed or transportable hard drives, memory cards and servers.
11. "Not authorized" and "unauthorized" mean not having consent or permission of the owner, or person licensed or authorized by the owner to grant consent or permission, to access or use any computer resource, or accessing or using any computer resource in a manner exceeding the consent or permission.

§432. Criminal invasion of computer privacy

1. A person is guilty of criminal invasion of computer privacy if the person intentionally accesses any computer resource knowing that the person is not authorized to do so.

2. Criminal invasion of computer privacy is a Class D crime.

§433. Aggravated criminal invasion of computer privacy

1. A person is guilty of aggravated criminal invasion of computer privacy if the person:
 - A. Intentionally makes an unauthorized copy of any computer program, computer software or computer information, knowing that the person is not authorized to do so;
 - B. Intentionally or knowingly damages any computer resource of another person, having no reasonable ground to believe that the person has the right to do so; or
 - C. Intentionally or knowingly introduces or allows the introduction of a computer virus into any computer resource, having no reasonable ground to believe that the person has the right to do so.
2. Aggravated criminal invasion of computer privacy is a Class C crime.

§434. Prosecution of invasion of computer privacy

1. The crime of criminal invasion of computer privacy as defined in section 432 may be prosecuted and punished in:
 - A. The county in which the defendant was located when the defendant accessed the computer resource; or
 - B. A county in which the computer resource was located.
2. The crime of aggravated criminal invasion of computer privacy as defined in section 433 may be prosecuted and punished in:
 - A. The county in which the defendant was located when the defendant copied the computer program, computer software or computer information;
 - B. The county in which the defendant was located when the defendant damaged the computer resource;
 - C. The county in which the defendant was located when the defendant introduced or allowed the introduction of a computer virus into the computer resource; or
 - D. A county in which the computer resource was located.

§435. Added jurisdiction to prosecute

1. In addition to the State's having jurisdiction pursuant to section 7 to convict a person under section 432 or 433, the State has jurisdiction to convict a person under this chapter when that person is physically located outside of this State and the prohibited conduct:
 - A. Occurs outside of this State and the victim of the crime is a resident of this State at the time of the crime; and
 - B. Is sufficient under this section to constitute a crime in this State.
2. As used in this section, "resident" means a person who lives in this State either permanently or for an extended period. "Extended period" includes, but is not limited to, the period of time a student attends a school or college and the period of time a person serving in the Armed Forces of the United States is stationed in this State.

§436. Permanent destruction of computer data on a computer used in the commission of a crime

1. If a person is convicted upon a finding of guilt or upon the acceptance of a plea of guilty or nolo contendere or found not criminally responsible of a violation of this Title, the Nation, after all appeal periods have run and those proceedings have concluded, may permanently destroy the computer data on any computer that was used to commit or facilitate the commission of that violation or cause the computer data to be permanently destroyed through the removal and destruction of any part of the computer in the possession of the Nation on which the computer data are stored.
2. Notwithstanding subsection 1, a criminal justice agency, prior to the destruction of computer data, may extract and provide computer data to a person if:

- A. Prior to the conclusion of criminal prosecution in the matter involving the computer data, the person provides written notification to the criminal justice agency having custody of the computer on which the computer data are stored that the person is interested in obtaining that computer data;
- B. The person either has an ownership interest in the computer data or wants the computer data only for the sentimental value of the data. When computer data are requested only for the sentimental value of the data, the person must state such in a written affidavit;
- C. The computer data that are the subject of the person's request may be lawfully disseminated;
- D. The computer data that are the subject of the person's request are not confidential by law;
- E. The computer data that are the subject of the request are specifically identified by the person making the request. For the purposes of this paragraph, "specifically identified" means identified with reasonable precision and not merely categorically;
- F. The criminal justice agency, in the judgment of the chief officer of the agency, determines the agency has the technological expertise, resources and personnel available to accommodate the request or to cause the request to be accommodated. The chief officer of the agency may consider whether there is a 3rd-party vendor that can accommodate the request if the chief officer determines the agency cannot accommodate the request for reasons provided in this paragraph. The chief officer of the agency subject to the request shall refer the request to an appropriate 3rd-party vendor for processing upon receipt by the chief officer of the agency of full payment from the requestor for the amount charged by the vendor to accommodate the request for information; and
- G. Notwithstanding any provision of law to the contrary, the person requesting the computer data makes advance payment for the time and costs that the criminal justice agency estimates will be needed for the requested computer data to be extracted and provided by the agency or caused by the agency to be extracted and provided to the person.

If the conditions identified in paragraphs A to G of this subsection are not met, the computer data that are the subject of the request may be permanently destroyed in accordance with subsection 1.

The chief officer of the criminal justice agency that is subject to a request under this subsection shall respond to the requestor within 60 days from the date the request was received by the chief officer. The chief officer's response must include but is not limited to what actions if any the agency will take regarding the computer data identified in the request.

§437. Permissible destruction or transfer of ownership to the Nation of a computer used in the commission of a crime

- 1. Notwithstanding any provision of law to the contrary and except as provided in subsection 3, the Nation may either permanently destroy or assume ownership of a computer that was used in the commission of a crime or that facilitated the commission of a crime if:
 - A. A person is convicted upon a finding of guilt or upon the acceptance of a plea of guilty or nolo contendere or is found not criminally responsible of a crime committed using, or that was facilitated through the use of, the computer and all appeal periods have run and those proceedings have concluded;
 - B. The opportunity for the computer to be forfeited to the Nation through proceedings at the presentencing stage has passed; and
 - C. A person having a lawful property interest in the computer has not notified the Nation in writing within 6 months following a conviction upon a finding of guilt or upon the acceptance of a plea of guilty or nolo contendere or a finding of not criminally responsible that the person wants to take possession of the computer. The written notification must be made to the criminal justice agency having custody of the computer. If the Nation assumes ownership of a computer pursuant to this subsection, all computer data stored on the computer must be permanently

destroyed by the Nation, or caused by the Nation to be permanently destroyed, in accordance with section 436.

2. A person who has a lawful property interest in a computer that was used to commit a crime or that facilitated the commission of a crime may take possession of the computer if:
 - A. The person notifies the Nation in writing within 6 months following a conviction upon a finding of guilt or upon the acceptance of a plea of guilty or nolo contendere or a finding of not criminally responsible that a person committed a crime using, or that was facilitated by the use of, the computer and all appeal periods have run and those proceedings have concluded, that the person wants to take possession of that computer. The written notification must be made to the criminal justice agency having custody of the computer;
 - B. The crime that was committed using, or that was facilitated through the use of, the computer is not a crime identified in chapter 12; and
 - C. All computer data stored on the computer have been permanently destroyed pursuant to section 436.
3. Notwithstanding subsection 2, a person having a lawful property interest in a computer may not take possession of that computer if the crime that was committed using, or that was facilitated through the use of, the computer is a crime identified in chapter 12. Notwithstanding subsection 1, the computer may be permanently destroyed by the Nation, or caused by the Nation to be permanently destroyed, in accordance with section 436 if the crime that was committed using, or that was facilitated through the use of, the computer is a crime identified in chapter 12.

When the Nation receives a notification from a person who wishes to take possession of a computer pursuant to subsection 2, the Nation must respond to that notification within 60 days from the date the notification was received by the Nation. The Nation's response must include but is not limited to what actions, if any, the Nation will take regarding the computer identified in the notification.

CHAPTER 19

FALSIFICATION IN OFFICIAL MATTERS

§451. Perjury

1. A person is guilty of perjury if he makes:
 - A. In any official proceeding, a false material statement under oath or affirmation, or swears or affirms the truth of a material statement previously made, and he does not believe the statement to be true; or
 - B. Inconsistent material statements, in the same official proceeding, under oath or affirmation, both within the period of limitations, one of which statements is false and not believed by him to be true.
2. In a prosecution under subsection 1, paragraph B, it need not be alleged or proved which of the statements is false but only that one or the other was false and not believed by the person to be true.
3. It is an affirmative defense to prosecution under this section that the defendant retracted the falsification in the course of the official proceeding in which it was made, and before it became manifest that the falsification was or would have been exposed.
- 3-A. In a prosecution under subsection 1, paragraph A, evidence that the allegedly false testimony in the prior official proceeding was contradicted by evidence in that proceeding may not be a sufficient basis by itself to sustain a conviction for perjury.
4. It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not a competent witness in making the statement or was disqualified from doing so. A document purporting to be made upon oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

5. As used in this section:
 - A. "Official proceeding" means any proceeding before a legislative, judicial, administrative or other governmental body or official authorized by law to take evidence under oath or affirmation including a notary or other person taking evidence in connection with any such proceeding;
 - B. "Material" means capable of affecting the course or outcome of the proceeding.
6. Perjury is a Class C crime.

§452. False swearing

1. A person is guilty of false swearing if:
 - A. The person makes a false statement under oath or affirmation or swears or affirms the truth of such a statement previously made and the person does not believe the statement to be true, provided
 - (1) the falsification occurs in an official proceeding as defined in section 451, subsection 5, paragraph A, or is made with the intention to mislead a public servant performing the public servant's official duties; or
 - (2) the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths; or
 - B. The person makes inconsistent statements under oath or affirmation, both within the period of limitations, one of which is false and not believed by the person to be true. In a prosecution under this subsection, it need not be alleged or proved which of the statements is false, but only that one or the other was false and not believed by the defendant to be true.
2. It is an affirmative defense to prosecution under this section that, when made in an official proceeding, the defendant retracted the falsification in the course of such proceeding before it became manifest that the falsification was or would have been exposed.
- 2-A. In a prosecution under subsection 1, paragraph A, evidence that the allegedly false testimony or statement in the prior official proceeding or before a notary or other person authorized to administer oaths was contradicted by evidence in that proceeding may not be a sufficient basis by itself to sustain a conviction for false swearing.
3. It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not a competent witness in making the statement or was disqualified from doing so. A document purporting to be made upon oaths or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.
4. False swearing is a Class D crime.

§453. Unsworn falsification

1. A person is guilty of unsworn falsification if:
 - A. He makes a written false statement which he does not believe to be true, on or pursuant to, a form conspicuously bearing notification authorized by statute or regulation to the effect that false statements made therein are punishable;
 - B. With the intent to deceive a public servant in the performance of his official duties, he
 - (1) makes any written false statement which he does not believe to be true, provided, however, that this subsection does not apply in the case of a written false statement made to a law enforcement officer by a person then in official custody and suspected of having committed a crime, except as provided in paragraph C; or
 - (2) knowingly creates, or attempts to create, a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or

- (3) submits or invites reliance on any sample, specimen, map, boundary mark or other object which he knows to be false; or
- C. With the intent to conceal his identity from a law enforcement officer while under arrest for a crime, after having been warned that it is a crime to give false information concerning identity, he gives false information concerning his name or date of birth, including, but not limited to, a signature.

2. Unsworn falsification is a Class D crime.

§454. Tampering with a witness, informant, juror or victim

1. A person is guilty of tampering with a witness or informant if, believing that an official proceeding, as defined in section 451, subsection 5, paragraph A, or an official criminal investigation is pending or will be instituted, the actor:

A. Induces or otherwise causes, or attempts to induce or cause, a witness or informant:

- (1) To testify or inform in a manner the actor knows to be false; or
- (2) To withhold testimony, information or evidence.

Violation of this paragraph is a Class C crime;

B. Uses force, violence or intimidation, or promises, offers or gives pecuniary benefit with the intent to induce a witness or informant:

- (1) To withhold testimony, information or evidence;
- (2) To refrain from attending a criminal proceeding or criminal investigation; or
- (3) To refrain from attending any other proceeding or investigation to which the witness or informant has been summoned by legal process.

Violation of this paragraph is a Class C crime; or

C. Solicits, accepts or agrees to accept pecuniary benefit for committing an act specified in paragraph A, subparagraph (1), or in paragraph B, subparagraph (1), (2) or (3). Violation of this paragraph is a Class C crime.

1-A. A person is guilty of tampering with a juror if the actor:

A. Contacts by any means a person who is a juror or any other person that the actor believes is in a position to influence a juror and the actor does so with the intention of influencing the juror in the performance of the juror's duty. Violation of this paragraph is a Class C crime; or

§455. Falsifying physical evidence

1. A person is guilty of falsifying physical evidence if, believing that an official proceeding as defined in section 451, subsection 5, paragraph A, or an official criminal investigation, is pending or will be instituted, he:

A. Alters, destroys, conceals or removes any thing relevant to such proceeding or investigation with intent to impair its verity, authenticity or availability in such proceeding or investigation; or

B. Presents or uses any thing which he knows to be false with intent to deceive a public servant who is or may be engaged in such proceeding or investigation.

2. Falsifying physical evidence is a Class D crime.

§456. Tampering with public records or information

1. A person is guilty of tampering with public records or information if he:

A. Knowingly makes a false entry in, or false alteration of any record, document or thing belonging to, or received or kept by the government, or required by law to be kept by others for the information of the government; or

B. Presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in subsection 1, paragraph A; or

- C. Intentionally destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing, knowing that he lacks authority to do so.
2. Tampering with public records or information is a Class D crime.

§457. Impersonating a public servant

1. A person is guilty of impersonating a public servant if he falsely pretends to be a public servant and engages in any conduct in that capacity with the intent to deceive anyone.
2. It is no defense to a prosecution under this section that the office the person pretended to hold did not in fact exist.
3. Impersonating a public servant is a Class E crime.

§458. Retaliation against a witness, informant, victim or juror

A person is guilty of retaliation against a witness, informant, victim or juror if, believing that another person is participating or has participated as a witness, informant, victim or juror in an official proceeding, as defined in section 451, subsection 5, paragraph A, or in an official criminal investigation, the actor engages in criminal conduct with the intent to retaliate for that other person's role in the official proceeding or official criminal investigation. Violation of this section is a Class C crime.

Official Note for Section 451-458

Sections 451 – 458 are adopted by the Penobscot Nation Chief and Council to include any and all Penobscot Nation Tribal Court proceedings and hearings.

CHAPTER 21

OFFENSES AGAINST PUBLIC ORDER

§501-A. Disorderly conduct

1. A person is guilty of disorderly conduct if:
 - A. In a public place, the person intentionally or recklessly causes annoyance to others by intentionally:
 - (1) Making loud and unreasonable noise, including, but not limited to, loud and unreasonable noise resulting from the use of consumer fireworks;
 - (2) Activating a device, or exposing a substance, that releases noxious and offensive odors; or
 - (3) Engaging in fighting, without being licensed or privileged to do so;
 - B. In a public or private place, the person knowingly accosts, insults, taunts or challenges any person with offensive, derisive or annoying words, or by gestures or other physical conduct, that would in fact have a direct tendency to cause a violent response by an ordinary person in the situation of the person so accosted, insulted, taunted or challenged;
 - C. In a private place, the person makes loud and unreasonable noise, including, but not limited to, loud and unreasonable noise resulting from the use of consumer fireworks, that can be heard by another person, who may be a law enforcement officer, as unreasonable noise in a public place or in another private place, after having been ordered by a law enforcement officer to cease the noise; or
 - D. In a private or public place on or near property where a funeral, burial or memorial service is being held, the person knowingly accosts, insults, taunts or challenges any person in mourning and in attendance at the funeral, burial or memorial service with unwanted, obtrusive communications by way of offensive, derisive or annoying words, or by gestures or other physical conduct, that would in fact have a direct tendency to cause a violent response by an ordinary person in mourning and in attendance at a funeral, burial or memorial service.

2. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
 - A. "Public place" means a place to which the public at large or a substantial group has access, including but not limited to:
 - (1) Public ways as defined in section 505;
 - (2) Schools and government-owned custodial facilities; and
 - (3) The lobbies, hallways, lavatories, toilets and basement portions of apartment houses, hotels, public buildings and transportation terminals.
 - B. "Private place" means any place that is not a public place.
 - C. "Consumer fireworks" has the same meaning as in Title 8, section 221-A, subsection 1-A.
3. Disorderly conduct is a Class E crime.

§502. Failure to disperse

1. When 6 or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, annoyance, or alarm, a law enforcement officer may order the participants and others in the immediate vicinity to disperse.
2. A person is guilty of failure to disperse if the person knowingly fails to comply with an order made pursuant to subsection 1 and:
 - A. The person is a participant in the course of disorderly conduct. Violation of this paragraph is a Class D crime; or
 - B. The person is in the immediate vicinity of the disorderly conduct. Violation of this paragraph is a Class E crime.

§503. Riot

1. A person is guilty of riot if, together with 5 or more other persons, he engages in disorderly conduct;
 - A. With intent imminently to commit or facilitate the commission of a crime involving physical injury or property damage against persons who are not participants; or
 - B. When he or any other participant to his knowledge uses or intends to use a firearm or other dangerous weapon in the course of the disorderly conduct.
2. Riot is a Class D crime.

§504. Unlawful assembly

A person is guilty of unlawful assembly if:

1. He assembles with 5 or more other persons with intent to engage in conduct constituting a riot; or being present at an assembly that either has or develops a purpose to engage in conduct constituting a riot, he remains there with intent to advance that purpose; and
2. He knowingly fails to comply with an order to disperse given by a law enforcement officer to the assembly.
3. Unlawful assembly is a Class E crime.

§505. Obstructing public ways

1. A person is guilty of obstructing public ways if he unreasonably obstructs the free passage of foot or vehicular traffic on any public way, and refuses to cease or remove the obstruction upon a lawful order to do so given him by a law enforcement officer
2. As used in this section, "public way" means a way, including a sidewalk, owned and maintained by the Nation, a county or a municipality over which the general public has a right to pass by foot or by vehicle, a way upon which the public has access as invitees or licensees or a way under the control of park commissioners or a body having like powers.
3. Obstructing public ways is a Class E crime.

§506. Harassment by telephone or by electronic communication device

1. A person is guilty of harassment by telephone or by electronic communication device if:

A. By means of telephone or electronic communication device the person intentionally, knowingly or recklessly makes any comment, request, suggestion or proposal without the consent of the person called or contacted:

- (1) That is, in fact, obscene; or
- (2) With conscious disregard of a substantial risk that a reasonable person would find the comment, request, suggestion or proposal offensively coarse.

Violation of this paragraph is a Class E crime;

A-1. By means of telephone or electronic communication device the person, with the intent to cause affront or alarm or for the purpose of arousing or gratifying sexual desire, sends an image or video of a sexual act as defined in section 251, subsection 1, paragraph C or of the actor's or another person's genitals and:

- (1) The person called or contacted is in fact under 14 years of age;
- (2) The person called or contacted is in fact 14 or 15 years of age and the actor is at least 5 years older than the person called or contacted; or
- (3) The person called or contacted suffers from a mental disability that is reasonably apparent or known to the actor.

Violation of this paragraph is a Class D crime;

A-2. By means of telephone or electronic communication device the person sends an image or a video of a sexual act as defined in section 251, subsection 1, paragraph C or of the actor's or another person's genitals without the consent of the person called or contacted after the person called or contacted has notified the actor, in writing or otherwise, that the person does not consent to receiving such images or videos. Violation of this paragraph is a Class E crime;

B. The person makes a telephone call or makes a call or contact by means of an electronic communication device, whether or not oral or written conversation ensues, without disclosing the person's identity and with the intent to annoy, abuse, threaten or harass any person at the called or contacted number or account. Violation of this paragraph is a Class E crime;

C. The person makes or causes the telephone or electronic communication device of another repeatedly or continuously to ring or activate or receive data, with the intent to harass any person at the called or contacted number or account. Violation of this paragraph is a Class E crime;

D. The person makes repeated telephone calls or repeated calls or contacts by means of an electronic communication device, during which oral or written conversation ensues, with the intent to harass any person at the called or contacted number or account. Violation of this paragraph is a Class E crime; or

E. The person knowingly permits any telephone or electronic communication device under the person's control to be used for any purpose prohibited by this section. Violation of this paragraph is a Class E crime.

2. The crime defined in this section may be prosecuted and punished in the county in which the defendant was located when the defendant used the telephone or electronic communication device, or in the county in which the telephone called or made to ring or the electronic communication device called or made to ring or be activated or receive data by the defendant was located.

2-A. As used in this section, "electronic communication device" means any electronic or digital product that communicates at a distance by electronic transmission impulses or by fiber optics, including any software capable of sending and receiving communication, allowing a person to electronically engage in the conduct prohibited under this section.

§506-A. Harassment

1. A person is guilty of harassment if, without reasonable cause:

- A. The person engages in any course of conduct with the intent to harass, torment or threaten another person:
- (1) After having been notified, in writing or otherwise, not to engage in such conduct by:
 - (a) Any sheriff, deputy sheriff, constable, police officer or justice of the peace. The notification not to engage in such conduct expires one year from the date of issuance; or
 - (b) A court in a protective order issued under Title 5, section 4654 or 4655 or Title 19-A, former section 4006 or 4007 or Title 19-A, section 4108 or 4110;
 - (2) If the person is an adult in the custody or under the supervision of the Department of Corrections, after having been forbidden to engage in such conduct by the Commissioner of Corrections, the chief administrative officer of the facility, the correctional administrator for the region or their designees; or
 - (3) After having been notified, in writing or otherwise, while the person was a member of the National Guard, not to engage in such conduct by a commanding officer. A person violates this subparagraph regardless of whether the person is a member of the National Guard when the person engages in the conduct and regardless of where the conduct occurs. The notification not to engage in such conduct expires one year from the date of issuance.

Violation of this paragraph is a Class E crime; or

- B. The person violates paragraph A and, at the time of the harassment, the person has 2 or more prior Penobscot Nation or Maine convictions under this section in which the victim was the same person or a member of that victim's immediate family or for engaging in substantially similar conduct to that contained in this paragraph in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime.
3. For the purposes of this section, "immediate family" means spouse, parent, child, sibling, stepchild and stepparent, "National Guard" has the same meaning as in Title 37-B, section 102, subsection 1 and "commanding officer" has the same meaning as in Title 37-B, section 402, subsection 4.

§507. Desecration and defacement

1. A person is guilty of desecration and defacement if he intentionally desecrates any public monument or structure, any place of worship or burial, or any private structure not owned by him.
2. As used in this section, "desecrate" means marring, defacing, damaging or otherwise physically mistreating, in a way that will outrage the sensibilities of an ordinary person likely to observe or discover the actions.
3. Desecration is a Class D crime.

§507-A. Interference with cemetery or burial ground

1. No person may intentionally or knowingly destroy, mutilate, deface, injure or remove any tomb, monument, gravestone, marker or other structure placed or designed as a memorial for the dead, or any portion or fragment of any such memorial, or any fence, railing, curb or other enclosure for the burial of the dead.
2. Subsection 1 does not apply to any person:
 - A. Who performs an act as authorized under Title 13, section 1371; or
 - B. Who meets the requirements governing eminent domain as established by state or federal law.
3. Any person who violates subsection 1 commits a Class D crime.

§507-B. Illegal possession or sale of gravestones

1. No person may possess, sell, attempt to sell, offer for sale, transfer or dispose of any tomb, monument, gravestone, marker or other structure placed or designed as a memorial for the dead, or any portion or fragment of any such memorial, knowing or having reasonable cause to know that it has been illegally removed from a cemetery or burial ground.

2. Any person who violates subsection 1 commits a Class C crime.
3. Any person who violates subsection 1 is liable to the following for triple damages to be recovered in a civil action:
 - A. The municipality or, in the case of unorganized territory, the county in which the cemetery or burial ground is located;
 - B. A cemetery association authorized to bring suit and recover damages by the municipality or, in the case of unorganized territory, the county in which the cemetery or burial ground is located; or
 - C. A historical society authorized to bring suit and recover damages by the municipality or, in the case of unorganized territory, the county in which the cemetery or burial ground is located.

§508. Abuse of corpse

1. A person is guilty of abuse of corpse if he intentionally and unlawfully disinters, digs up, removes, conceals, mutilates or destroys a human corpse, or any part or the ashes thereof.
2. It is a defense to prosecution under this section that the actor was a physician, scientist or student who had in his possession, or used human bodies or parts thereof lawfully obtained, for anatomical, physiological or other scientific investigation or instruction.
3. Abuse of corpse is a Class D crime.

§509. False public alarm or report; aggravated false public alarm or report

1. A person is guilty of false public alarm or report if:
 - A. The person knowingly gives or causes to be given false information to a law enforcement officer, an emergency communications center or the enhanced 9-1-1 services established in Title 25, chapter 352 with the intent of inducing the officer, the emergency communications center or any other emergency services personnel to believe that a crime has been committed or that another has committed a crime, knowing the information to be false;
 - B. The person knowingly gives or causes to be given false information to a law enforcement officer, a member of a firefighting agency, including a volunteer fire department, an emergency communications center, the enhanced 9-1-1 services established in Title 25, chapter 352 or any other person knowing that the other person is likely to communicate the information to a law enforcement officer, a member of a firefighting agency, an emergency communications center or any other emergency services personnel concerning a fire, explosive or other similar substance that is capable of endangering the safety of persons, knowing that the information is false, or knowing that the person has no information relating to the fire, explosive or other similar substance; or
 - C. The person knowingly gives or causes to be given false information concerning an emergency to an ambulance service, an emergency communications center, the enhanced 9-1-1 services established in Title 25, chapter 352, any other emergency services personnel or a government agency or public utility that deals with emergencies involving danger to life or property, with the intent of inducing the service, personnel, agency, center or utility to respond to the reported emergency, knowing the information to be false.

A violation of this subsection is a Class D crime.

For the purposes of this subsection, "emergency communications center" means a state, county or municipal government entity that receives calls by 9-1-1, business lines, radio or other methods requesting public service or emergency response from public safety agencies and, as appropriate, dispatches requests to public safety agencies and assists in coordinating the response between agencies and other specialized professionals.

3. A person is guilty of aggravated false public alarm or report if the person violates subsection 1 and the violation causes the evacuation, shutdown or lockdown of a building, school, public square or park, place of assembly or public transportation facility.

A violation of this subsection is a Class C crime.\

§511. Violation of privacy

1. A person is guilty of violation of privacy if, except in the execution of a public duty or as authorized by law, that person intentionally:
 - A. Commits a civil trespass on property with the intent to overhear or observe any person in a private place;
 - B. Installs or uses in a private place without the consent of the person or persons entitled to privacy in that place, any device for observing, photographing, recording, amplifying or broadcasting sounds or events in that place;
 - C. Installs or uses outside a private place without the consent of the person or persons entitled to privacy therein any device for observing, photographing, hearing, recording, amplifying or broadcasting images or sounds originating in that place that would not ordinarily be visible, audible or comprehensible outside that place;
 - D. Engages in visual surveillance in a public place by means of mechanical or electronic equipment with the intent to observe or photograph, or record, amplify or broadcast an image of any portion of the body of another person present in that place when that portion of the body is in fact concealed from public view under clothing and a reasonable person would expect it to be safe from surveillance;
 - E. Violates paragraph A, B, C or D and the other person subject to a violation of privacy has not in fact attained 16 years of age; or
 - F. Violates paragraph A, B, C or D for the purpose of arousing or gratifying the sexual desire of that person or another person, and the person subject to a violation of privacy has not in fact attained 16 years of age.
- 1-A. It is a defense to a prosecution under subsection 1, paragraph D that the person subject to surveillance had in fact attained 14 years of age and had consented to the visual surveillance.
2. As used in this section, "private place" means a place where one may reasonably expect to be safe from surveillance, including, but not limited to, changing or dressing rooms, bathrooms and similar places.
3. Violation of privacy is a Class D crime.

§511-A. Unauthorized dissemination of certain private images

1. A person is guilty of unauthorized dissemination of certain private images if the person, with the intent to harass, torment or threaten the depicted person or another person, knowingly disseminates, displays or publishes a photograph, videotape, film or digital recording of another person in a state of nudity or engaged in a sexual act or engaged in sexual contact in a manner in which there is no public or newsworthy purpose when the person knows or should have known that the depicted person:
 - B. Is identifiable from the image itself or information displayed in connection with the image; and
 - C. Has not consented to the dissemination, display or publication of the private image.
2. This section does not apply to the following:
 - A. Lawful and common practices of medical treatment;
 - B. Images involving voluntary exposure in a public or commercial setting; or
 - C. An interactive computer service, as defined in 47 United States Code, Section 230(f)(2), or an information service, as defined in 47 United States Code, Section 153, with regard to content provided by another person.
3. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Sexual act" has the same meaning as in section 251, subsection 1, paragraph C and also includes:
 - (1) The transfer or transmission of semen upon any part of the clothed or unclothed body of the depicted person;
 - (2) Urination within a sexual context;
 - (3) Bondage or sadomasochism in any sexual context;
 - (4) Simulated sexual acts; and
 - (5) Masturbation.
- B. "Sexual contact" has the same meaning as in section 251, subsection 1, paragraph D and includes simulated sexual contact.
- C. "State of nudity" means the condition of displaying fully unclothed, partially unclothed or transparently clothed genitals, pubic area or anus or, if the person is female, a partially or fully exposed breast below a point immediately above the top of the areola.
- 4. Unauthorized dissemination of certain private images is a Class D crime.
- 5. Access to and dissemination of certain private images as described in subsection 1 and any written information describing and directly pertaining to the images contained in court records are governed by rule or administrative order adopted by the Supreme Judicial Court.

§512. Failure to report treatment of a gunshot wound

- 1. A person is guilty of failure to report treatment of a gunshot wound if, being a health care practitioner or emergency medical services person, that person treats a human being for a wound apparently caused by the discharge of a firearm and knowingly fails to report the same to a law enforcement agency immediately by the quickest means of communication.
- 2. Failure to report treatment of a gunshot wound is a Class E crime.
- 3. As used in this section, "health care practitioner" has the same meaning as in Title 24, section 2502, subsection 1-A, and "emergency medical services person" has the same meaning as in Title 32, section 83, subsection 12.

§513. Maintaining an unprotected well

- 1. A person is guilty of maintaining an unprotected well if, being the owner or occupier of land on which there is a well, he knowingly fails to enclose the well with a substantial fence or other substantial enclosing barrier or to protect it by a substantial covering which is securely fastened.
- 2. Maintaining an unprotected well is a Class E crime.

§514. Abandoning an airtight container

- 1. A person is guilty of abandoning an airtight container if:
 - A. He abandons or discards in any public place, or in a private place that is accessible to minors, any chest, closet, piece of furniture, refrigerator, icebox or other article having a compartment capacity of 1 1/2 cubic feet or more and having a door or lid which when closed cannot be opened easily from the inside; or
 - B. Being the owner, lessee, manager or other person in control of a public place or of a place that is accessible to minors on which there has been abandoned or discarded a container described in subsection 1, paragraph A, he knowingly or recklessly fails to remove such container from that place, or to remove the door, lid or other cover of the container.
- 2. Abandoning an airtight container is a Class E crime.

§515. Unlawful prize fighting

- 1. A person is guilty of unlawful prize fighting if:
 - A. He knowingly engages in, encourages or does any act to further a premeditated fight without weapons between 2 or more persons, or a fight commonly called a ring fight or prize fight; or

- B. He knowingly sends or publishes a challenge or acceptance of a challenge for such, or carries or delivers such a challenge or acceptance, or trains or assists any person in training or preparing for such fight, or acts as umpire or judge for such fight.
- 2. This section shall not apply to any boxing contest or exhibition:
 - B. Under the auspices of a nonprofit organization at which no admission charge is made.
- 2-A. This section does not apply to any mixed martial arts, Muay Thai, kickboxing or boxing competition, exhibition or event authorized pursuant to Title 8, chapter 20 as long as rules have been adopted by the Combat Sports Authority of Maine pursuant to Title 8, chapter 20.
- 3. Unlawful prize fighting is a Class E crime.

§516. Champerty

- 1. A person is guilty of champerty if, with the intent to collect by a civil action a claim, account, note or other demand due, or to become due to another person, he gives or promises anything of value to such person.
- 2. This section does not apply to agreements between attorney and client to bring, prosecute or defend a civil action on a contingent fee basis.
- 3. Champerty is a Class E crime.

§517. Creating police standoff

- 1. **Creating police standoff.** A person is guilty of creating a police standoff if that person:
 - A. Is in fact barricaded as a result of the person's own actions;
 - B. Is or claims to be armed with a dangerous weapon;
 - C. Is instructed by a law enforcement officer or law enforcement agency, either personally, electronically or in writing, to leave the barricaded location; and
 - D. Fails in fact to leave the barricaded location within 1/2 hour of receiving the instruction as described in paragraph C from a law enforcement officer or law enforcement agency.
- 2. **Class E crime.** Creating a police standoff is a Class E crime.

CHAPTER 23

OFFENSES AGAINST THE FAMILY

§551. Bigamy

- 1. A person is guilty of bigamy if, having a spouse, he intentionally marries or purports to marry, knowing that he is legally ineligible to do so.
- 2. Bigamy is a Class E crime.

§552. Nonsupport of dependents

- 1. A person is guilty of nonsupport of dependents if he knowingly fails to provide support which he is able by means of property or capacity for labor to provide and which he knows he is legally obliged to provide to a spouse, child or other person declared by law to be his dependent.
- 2. As used in this section, "support" includes but is not limited to food, shelter, clothing and other necessary care.
- 2-A. Prosecution may be brought in any venue where either the dependent or the defendant resides.
- 3. Nonsupport of dependents is a Class E crime.
- 4. A person placed on probation as a result of a violation of this section may be placed under the supervision of the Department of Health and Human Services. Notwithstanding any other provision of law, the period of probation may extend to the time when the youngest dependent attains the age of 18.

Official Note for Section 552

2. Section 552 of this section: “Department of Health and Human Services” adopted by the Penobscot Nation Chief and Council to include Penobscot Indian Nation Department of Social Services.

§553. Abandonment of child

1. A person is guilty of abandonment of a child if, being a parent, guardian or other person legally charged with the long-term care and custody of a child or being a person to whom the long-term care and custody of a child has been expressly delegated:
 - A. The person leaves the child who is less than 14 years of age in a place with the intent to abandon the child. Violation of this paragraph is a Class D crime;
 - B. The person leaves the child who is less than 6 years of age in a place with the intent to abandon the child. Violation of this paragraph is a Class C crime;
 - C. The person, with the intent to avoid or divest the person of permanent parental responsibility, places the child who is less than 18 years of age with or transfers the physical custody of the child to a nonrelative without court approval. Violation of this paragraph is a Class D crime; or
 - D. The person, with the intent to avoid or divest the person of permanent parental responsibility, places the child who is less than 6 years of age with or transfers the physical custody of the child to a nonrelative without court approval. Violation of this paragraph is a Class C crime.
3. It is an affirmative defense to a prosecution under this section that, at the time the offense occurred:
 - A. The child was less than 31 days of age; and
 - B. The child was delivered by the person charged under this section to a safe haven baby box as defined in Title 22, section 4018, subsection 1, paragraph A-1 or to an individual the person reasonably believed to be:
 - (1) A law enforcement officer;
 - (2) Staff at a medical emergency room;
 - (3) A medical services provider as defined in Title 22, section 4018;
 - (4) A hospital staff member at a hospital; or
 - (5) A firefighter at a fire department facility.
4. It is an affirmative defense to a prosecution under this section that the person had voluntarily placed the child with a person, agency or medical facility and the placement resulted from communication between the person or the person's agent and the Department of Health and Human Services and health care professionals with the purpose of securing a placement that is in the best interests of the child.
5. It is an affirmative defense to a prosecution under subsection 1, paragraph C or D that the person, due to the incarceration, military service, medical treatment or incapacity of the person, temporarily placed the child or transferred the physical custody of the child for a designated short-term period with a specific intent and time period for the return of the child.

Official Note for Section 553

3. Section 553 of this section: “Department of Health and Human Services” adopted by the Penobscot Nation Chief and Council to include Penobscot Indian Nation Department of Social Services.

§553-A. Illegal payment with respect to an adoption

1. A person is guilty of illegal payment with respect to an adoption if that person:
 - A. Is the parent of a child or is a person whose consent is required pursuant to Title 18-C, section 9-302 and, in return for placing that child for adoption, intentionally or knowingly solicits or receives monetary payment or other valuable consideration that is not authorized by Title 18-C, section 9-306; or

- B. With the intent of adopting a child, intentionally or knowingly provides, or offers to provide, the parent of that child or the person whose consent is required pursuant to Title 18-C, section 9-302 with monetary payment or other valuable consideration that is not authorized by Title 18-C, section 9-306.

2. Violation of this section is a Class D crime.

§554. Endangering the welfare of a child

1. A person is guilty of endangering the welfare of a child if that person:

- A. Knowingly permits a child to enter or remain in a house of prostitution. Violation of this paragraph is a Class D crime;
- B. Knowingly sells, furnishes, gives away or offers to sell, furnish or give away to a child under 16 years of age any intoxicating liquor, tobacco product as defined in Title 22, section 1551, subsection 3, air rifles, gunpowder, smokeless powder or ammunition for firearms. Violation of this paragraph is a Class D crime;

B-2. Being a parent, foster parent, guardian or other person responsible for the long-term general care and welfare of a child, recklessly fails to take reasonable measures to protect the child from the risk of further bodily injury after knowing:

- (1) That the child had, in fact, sustained serious bodily injury or bodily injury under circumstances posing a substantial risk of serious bodily injury; and
- (2) That such bodily injury was, in fact, caused by the unlawful use of physical force by another person.

Violation of this paragraph is a Class C crime;

B-3. Being the parent, foster parent, guardian or other person having the care and custody of a child, knowingly deprives the child of necessary health care, with a result that the child is placed in danger of serious harm. Violation of this paragraph is a Class D crime;

B-4. Acting with criminal negligence stores or leaves on premises that are under the person's control a loaded firearm in a manner that allows a child under 16 years of age to gain access to the loaded firearm without the permission of the child's parent, foster parent or guardian and the child in fact gains access to the loaded firearm and:

- (1) Uses the loaded firearm in a reckless or threatening manner;
- (2) Uses the loaded firearm during the commission of a crime; or
- (3) Discharges the loaded firearm.

Violation of this paragraph is a Class D crime; or

C. Otherwise recklessly endangers the health, safety or welfare of the child by violating a duty of care or protection. Violation of this paragraph is a Class D crime.

2. It is an affirmative defense to prosecution under this section that:

- A. The defendant was the parent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of the child under 16 years of age who furnished the child any tobacco product as defined in Title 22, section 1551, subsection 3 or a reasonable amount of intoxicating liquor in the actor's home and presence;
- B. The defendant was a person acting pursuant to authority expressly or impliedly granted in Title 22; or
- C. The defendant was the parent, foster parent, guardian or an adult approved by the parent, foster parent or guardian who furnished the child under 16 years of age an air rifle, gunpowder, smokeless powder or ammunition for a firearm for use in a supervised manner.

4. It is an affirmative defense to prosecution under subsection 1, paragraph B-4 that:

- A. The loaded firearm is:
 - (1) Stored in a locked box, locked gun safe or other secure, locked space;
 - (2) Stored or left in a location that a reasonable person would believe to be secure; or
 - (3) Secured with a trigger lock or similar device that prevents the firearm from discharging;

- B. The loaded firearm is carried on the person or within such close proximity to the person that the person can readily retrieve and use the firearm as if the firearm were carried on the person;
- C. A child who in fact gains access to the loaded firearm gains access in order to defend the child or a 3rd person under the circumstances enumerated in section 108, subsection 2, paragraph A or B;
- D. The person has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises where the person stores or leaves the loaded firearm;
- E. A child in fact gains access to the loaded firearm as the result of a criminal trespass by any person on the premises where the firearm is stored or left; or
- F. A child in fact gains access to the loaded firearm as the result of a theft of the firearm by any person from the premises where the firearm is stored or left.

§554-A. Unlawful transfer of a firearm other than a handgun to a minor

- 1. As used in this section, the following terms have the following meanings.
 - A. "Transfer" means to sell, furnish, give, lend, deliver or otherwise provide, with or without consideration.
 - C. "Sell" means to furnish, deliver or otherwise provide for consideration.
 - D. "Firearm" means a firearm other than a handgun as defined in section 554-B, subsection 1, paragraph A.
- 2. A person is guilty of unlawfully transferring a firearm to a person under 16 years of age if that person, who is not the parent, foster parent or guardian of the person under 16 years of age, knowingly transfers a firearm to a person under 16 years of age. Violation of this subsection is a Class D crime.
- 2-A. A person is guilty of unlawfully selling a firearm to a person 16 years of age or older and under 18 years of age if that person, who is not the parent, foster parent or guardian of the person 16 years of age or older and under 18 years of age, knowingly sells a firearm to a person 16 years of age or older and under 18 years of age.
 - A. A person who violates this subsection commits a civil violation for which a fine of not more than \$500 may be adjudged.
 - B. A person who violates this subsection after having been adjudicated as having committed one or more violations under this subsection commits a Class D crime.
- 3. It is an affirmative defense to a prosecution under subsection 2 that:
 - A. The actor reasonably believed the person receiving the firearm had attained 16 years of age. A reasonable belief cannot be based solely upon the physical appearance of the person or upon the oral representation of that person as to that person's age;
 - B. The transfer of the firearm to the person under 16 years of age was approved by the parent, foster parent or guardian of the person under 16 years of age.
- 3-A. It is an affirmative defense to a prosecution under subsection 2-A that:
 - A. The actor reasonably believed the person receiving the firearm had attained 18 years of age. A reasonable belief cannot be based solely upon the physical appearance of the person or upon the oral representation of that person as to that person's age; or
 - B. The sale of the firearm to the person 16 years of age or older and under 18 years of age was approved by the parent, foster parent or guardian of the person 16 years of age or older and under 18 years of age.

§554-B. Unlawful transfer of handgun to minor

- 1. As used in this section, the following terms have the following meanings.
 - A. "Handgun" means a firearm that has a short stock and is designed to be held and fired by the use of a single hand, or any combination of parts from which a handgun can be assembled.
 - B. "Minor" means a person under 18 years of age.

- C. "Transfer" means to sell, furnish, give, lend, deliver or otherwise provide, with or without consideration.
- 2. A person is guilty of unlawfully transferring a handgun to a minor if that person knowingly transfers a handgun to a person who the transferor knows or has reasonable cause to believe is a minor.
- 3. This section does not apply to:
 - A. A temporary transfer of a handgun to a minor:
 - (1) With the prior written consent of the minor's parent or guardian and that parent or guardian is not prohibited by federal, state or local law from possessing a firearm; or
 - (2) In the course of employment, target practice, hunting or instruction in the safe and lawful use of a handgun.
 - The minor may transport an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in this subparagraph is to take place and directly from the place at which such an activity took place to the transferor;
 - B. A minor who is a member of the United States Armed Forces or the National Guard who possesses or is armed with a handgun in the line of duty;
 - C. A transfer by inheritance of title to, but not possession of, a handgun to a minor; or
 - D. The transfer of a handgun to a minor when the minor takes the handgun in self-defense or in defense of another person against an intruder into the residence of the minor or a residence in which the minor is an invited guest.
- 4. The State may not permanently confiscate a handgun that is transferred to a minor in circumstances in which the transferor is not in violation of this section and if the possession of the handgun by the minor subsequently becomes unlawful because of the conduct of the minor. When that handgun is no longer required by the State for the purposes of investigation or prosecution, the handgun must be returned to the lawful owner.
- 5. The following penalties apply.
 - A. A person who violates this section commits a Class D crime, except as provided in paragraph B.
 - B. A person who violates this section and, at the time of the offense, has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime.

§555. Endangering welfare of dependent person

- 1. A person is guilty of endangering the welfare of a dependent person if:
 - A. The person recklessly endangers the health, safety or mental welfare of a dependent person. Violation of this paragraph is a Class D crime;
 - B. The person intentionally or knowingly endangers the health, safety or mental welfare of a dependent person. Violation of this paragraph is a Class C crime;
 - C. The person recklessly infringes on a dependent person's rights of association, including but not limited to the right to receive visitors, mail or telephone or electronic communication, for the purpose of establishing or maintaining undue influence over that person. Violation of this paragraph is a Class D crime; or
 - D. The person intentionally or knowingly infringes on a dependent person's rights of association, including but not limited to the right to receive visitors, mail or telephone or electronic communication, for the purpose of establishing or maintaining undue influence over that person. Violation of this paragraph is a Class C crime.
- 2. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
 - A. "Endanger" includes a failure to act only when the defendant has a legal duty to protect the health, safety or mental welfare of the dependent person. For purposes of this paragraph, a legal duty may be inferred if the defendant has assumed responsibility in whole or in part for the care of the dependent person.

- B. "Dependent person" means a person, regardless of where that person resides, who is wholly or partially dependent upon one or more other persons for care or support because the person suffers from a significant limitation in mobility, vision, hearing or mental functioning or is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect.
- C. "Undue influence" has the same meaning as in section 109, subsection 4

§556. Incest

- 1. A person is guilty of incest if the person is at least 18 years of age and:
 - A. Engages in sexual intercourse with another person who the actor knows is related to the actor within the 2nd degree of consanguinity. Violation of this paragraph is a Class D crime;
 - B. Violates paragraph A and, at the time of the incest, the person has 2 or more prior Penobscot Nation or Maine convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime.
- 1-A. It is a defense to a prosecution under this section that, at the time the actor engaged in sexual intercourse with the other person, the actor was legally married to the other person.
- 1-B. As used in this section "sexual intercourse" means any penetration of the female sex organ by the male sex organ. Emission is not required.
- 1-C. As used in this section, "related to the actor within the 2nd degree of consanguinity" has the following meanings.
 - A. When the actor is a woman, it means the other person is her father, grandfather, son, grandson, brother, brother's son, sister's son, father's brother or mother's brother.
 - B. When this actor is a man, it means the other person is his mother, grandmother, daughter, granddaughter, sister, brother's daughter, sister's daughter, father's sister or mother's sister.

§557. Other defenses

For the purposes of this chapter, a person who in good faith provides treatment for a child or dependent person by spiritual means through prayer may not for that reason alone be determined to have knowingly endangered the welfare of that child or dependent person.

CHAPTER 25

BRIBERY AND CORRUPT PRACTICES

§601. Scope of chapter

Nothing in this chapter shall be construed to prohibit the giving or receiving of campaign contributions made for the purpose of defraying the costs of a political campaign. No person shall be convicted of an offense solely on the evidence that a campaign contribution was made, and that an appointment or nomination was subsequently made by the person to whose campaign or political party the contribution was made.

§602. Bribery in official and political matters

- 1. A person is guilty of bribery in official and political matters if:
 - A. He promises, offers, or gives any pecuniary benefit to another with the intention of influencing the other's action, decision, opinion, recommendation, vote, nomination or other exercise of discretion as a public servant, party official or voter;
 - B. Being a public servant, party official, candidate for electoral office or voter, he solicits, accepts or agrees to accept any pecuniary benefit from another knowing or believing the other's purpose

- to be as described in paragraph A, or fails to report to a law enforcement officer that he has been offered or promised a pecuniary benefit in violation of paragraph A; or
 - C. That person promises, offers or gives any pecuniary benefit to another with the intention of obtaining the other's signature on an absentee ballot under Title 21-A, chapter 9, subchapter IV, or referendum petition under Title 21-A, chapter 11, or that person solicits, accepts or agrees to accept any pecuniary benefit from another knowing or believing the other's purpose is to obtain that person's signature on an absentee ballot or referendum petition, or fails to report to a law enforcement officer that the person has been offered or promised a pecuniary benefit in violation of this paragraph.
2. As used in this section and other sections of this chapter, the following definitions apply.
 - A. A person is a "candidate for electoral office" upon his public announcement of his candidacy.
 - B. "Party official" means any person holding any post in a political party whether by election, appointment or otherwise.
 - C. "Pecuniary benefit" means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain; it does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally. "Pecuniary benefit" does not include the following:
 - (1) A meal, if the meal is provided by industry or special interest organizations as part of an informational program presented to a group of public servants;
 - (2) A meal, if the meal is a prayer breakfast or a meal served during a meeting to establish a prayer breakfast; or
 - (3) A subscription to a newspaper, news magazine or other news publication.
 3. Bribery in official and political matters is a Class C crime.

§603. Improper influence

1. A person is guilty of improper influence if he:
 - A. Threatens any harm to a public servant, party official or voter with the purpose of influencing his action, decision, opinion, recommendation, nomination, vote or other exercise of discretion;
 - B. Privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, argument or other communication with the intention of influencing that discretion on the basis of considerations other than those authorized by law; or
 - C. Being a public servant or party official, fails to report to a law enforcement officer conduct designed to influence him in violation of paragraphs A or B.
2. "Harm" means any disadvantage or injury, pecuniary or otherwise, including disadvantage or injury to any other person or entity in whose welfare the public servant, party official or voter is interested.
3. Improper influence is a Class D crime.

§604. Improper compensation for past action

1. A person is guilty of improper compensation for past action if:
 - A. Being a public servant, he solicits, accepts or agrees to accept any pecuniary benefit in return for having given a decision, opinion, recommendation, nomination, vote, otherwise exercised his discretion, or for having violated his duty; or
 - B. He promises, offers or gives any pecuniary benefit, acceptance of which would be a violation of paragraph A.
2. Improper compensation for past action is a Class D crime.

§605. Improper gifts to public servants

1. A person is guilty of improper gifts to public servants if:
 - A. Being a public servant that person solicits, accepts or agrees to accept any pecuniary benefit from a person if the public servant knows or reasonably should know that the purpose of the

donor in making the gift is to influence the public servant in the performance of the public servant's official duties or vote, or is intended as a reward for action on the part of the public servant; or

B. He knowingly gives, offers, or promises any pecuniary benefit prohibited by paragraph A.

2. Improper gifts to public servants is a Class E crime.

§606. Improper compensation for services

1. A person is guilty of improper compensation for services if:

A. Being a public servant, he solicits, accepts or agrees to accept any pecuniary benefit in return for advice or other assistance in preparing or promoting a bill, contract, claim or other transaction or proposal as to which he knows that he has or is likely to have an official discretion to exercise; or

B. He gives, offers or promises any pecuniary benefit, knowing that it is prohibited by paragraph A.

2. Improper compensation for services is a Class E crime.

§607. Purchase of public office

1. A person is guilty of purchase of public office if:

A. He solicits, accepts or agrees to accept, for himself, another person, or a political party, money or any other pecuniary benefit as compensation for his endorsement, nomination, appointment, approval or disapproval of any person for a position as a public servant or for the advancement of any public servant; or

B. He knowingly gives, offers or promises any pecuniary benefit prohibited by paragraph A.

2. Purchase of public office is a Class D crime.

§608. Official oppression

1. A person is guilty of official oppression if, being a public servant and acting with the intention to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.

2. Official oppression is a Class E crime.

§609. Misuse of information

1. A person is guilty of misuse of information if, being a public servant and knowing that official action is contemplated, or acting in reliance on information which he has acquired by virtue of his office or from another public servant, he:

A. Acquires or divests himself of a pecuniary interest in any property, transaction or enterprise that may be affected by such official action or information;

B. Speculates or wagers on the basis of such official action or information; or

C. Knowingly aids another to do any of the things described in paragraphs A and B.

2. Misuse of information is a Class E crime.

Official Note for Section 601-707-

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1. Sections 601-609 adopted by the Penobscot Nation Chief and Council to include and protect all tribal officials, representatives, staff and appointed persons.
 2. Sections 601-609 are adopted by the Penobscot Nation Chief and Council to include any and all Penobscot Nation Tribal Court proceedings and hearings.

CHAPTER 29

FORGERY AND RELATED OFFENSES

§701. Definitions

As used in sections 702 and 703:

1. A person "falsely alters" a written instrument when, without the authority of anyone entitled to grant it, he changes a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of, or fully authorized by, its ostensible holder, author, maker or drawer;
2. A person "falsely completes" a written instrument when, by adding, inserting or changing matter, he transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of, or fully authorized by, its ostensible author, maker or drawer;
3. A person "falsely makes" a written instrument when he makes or draws a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible author, maker or drawer, but which is not such, either because the ostensible maker or drawer is fictitious or because, if real, he did not authorize the making or drawing thereof;
4. "Written instrument" includes any token, coin, stamp, seal, badge, trademark, credit card, absentee ballot application, absentee ballot envelope, medical drug prescription form, other evidence or symbol of value, right, privilege or identification, and any paper, document or other written instrument containing written or printed matter or its equivalent;
5. "Complete written instrument" means a written instrument which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof; and
6. "Incomplete written instrument" means a written instrument which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

§703. Forgery

1. A person is guilty of forgery if, with the intent to defraud or deceive another person or government:
 - A. The person falsely makes, completes, endorses or alters a written instrument, or knowingly utters or possesses such an instrument. Violation of this paragraph is a Class D crime;
 - A-1. The person violates paragraph A and:
 - (2) The face value of the written instrument or the aggregate value of the instruments is more than \$1,000 but not more than \$10,000. Violation of this subparagraph is a Class C crime; or
 - (3) At the time of the forgery, the person has 2 or more prior convictions for any combination of the Penobscot Nation or Maine offenses listed in this subparagraph or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this subparagraph in another jurisdiction. The Penobscot Nation or Maine offenses are: theft; any violation of this section; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702 or 708; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime;
 - B. The person causes another, by deception, to sign or execute a written instrument, or utters such an instrument. Violation of this paragraph is a Class D crime; or

B-1. The person violates paragraph B and:

- (2) The face value of the written instrument or the aggregate value of the instruments is more than \$1,000 but not more than \$10,000. Violation of this subparagraph is a Class C crime; or
 - (3) At the time of the forgery, the person has 2 or more prior convictions for any combination of the Penobscot Nation or Maine offenses listed in this subparagraph or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this subparagraph in another jurisdiction. The Penobscot Nation or Maine offenses are: theft; any violation of this section; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702 or 708; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime.
3. Amounts of value involved in forgeries may be aggregated in the same manner as provided in section 352, subsection 5, paragraph E. Prosecution of an aggregated forgery may be brought in any venue in which one of the aggregated forgeries was committed.

§704. Possession of forgery devices

1. A person is guilty of possession of forgery devices if:
 - A. He makes or possesses with knowledge of its character, any plate, die or other device, apparatus, equipment or article specifically designed or adapted for use in committing aggravated forgery or forgery; or
 - B. He makes or possesses any device, apparatus, equipment, or article capable of or adaptable to use in committing an aggravated forgery or forgery, with the intent to use it himself, or to aid or permit another to use it for purposes of committing aggravated forgery or forgery.
2. Possession of forgery devices is a Class E crime.

§705. Criminal simulation

1. A person is guilty of criminal simulation if:
 - A. With intent to defraud, the person makes or alters any property so that it appears to have an age, rarity, quality, composition, source or authorship that it does not in fact possess or, with knowledge of its true character and with intent to defraud, the person transfers or possesses property so simulated. A violation of this paragraph is a Class E crime;
 - B. In return for a pecuniary benefit:
 - (1) The person authors, prepares, writes, sells, transfers or possesses with intent to sell or transfer, an essay, term paper or other manuscript knowing that it will be, or believing that it probably will be, submitted by another person in satisfaction of a course, credit or degree requirement at a university or other degree, diploma or certificate-granting educational institution. A violation of this subparagraph is a Class E crime; or
 - (2) The person takes an examination for another person in satisfaction of a course, credit or degree requirement at a university or other degree, diploma or certificate-granting educational institution. A violation of this subparagraph is a Class E crime;
 - C. The person knowingly makes, gives or exhibits a false pedigree in writing of any animal. A violation of this paragraph is a Class E crime;
 - D. With intent to defraud and to prevent identification:
 - (1) The person alters, removes or obscures the manufacturer's serial number or any other distinguishing identification number, mark or symbol upon any automobile, snowmobile, outboard motor, motorboat, aircraft or any other vehicle or upon any machine or other object, other than a firearm. A violation of this subparagraph is a Class E crime; or

- (2) The person possesses any such object or any such item after that number has been altered, removed or obscured. A violation of this subparagraph is a Class E crime; or
- E. With intent to defraud or to prevent identification:
 - (1) The person alters, removes or obscures the manufacturer's make, model or serial number on any firearm. A violation of this subparagraph is a Class C crime; or
 - (2) The person possesses a firearm altered as set out in subparagraph (1) or intentionally or knowingly transports any such firearm. A violation of this subparagraph is a Class C crime.

§706. Suppressing recordable instrument

1. A person is guilty of suppressing a recordable instrument if, with intent to defraud anyone, he falsifies, destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording, whether or not it is in fact recorded.
2. Suppressing a recordable instrument is a Class E crime.

§706-A. Falsely filing a recordable instrument

1. A person is guilty of falsely filing a recordable instrument if, with intent to defraud, harass or intimidate, the person files or causes to be filed a will, deed, mortgage, security instrument or other writing for which the law provides public recording, knowing or believing the writing to be false or without legal authority.
2. Falsely filing a recordable instrument is a Class D crime.

§707. Falsifying private records

1. A person is guilty of falsifying private records if, with intent to defraud any person, he:
 - A. Makes a false entry in the records of an organization, or
 - B. Alters, erases, obliterates, deletes, removes or destroys a true entry in the records of an organization; or
 - C. Omits to make a true entry in the records of an organization in violation of a duty to do so which he knows to be imposed on him by statute; or
 - D. Prevents the making of a true entry or causes the omission thereof in the records of an organization.
2. Falsifying private records is a Class E crime.

§707-A. Falsifying health care records

1. A person is guilty of falsifying health care records if, with intent to deceive any person or governmental entity, the person:
 - A. Makes, or causes to be made, a false material entry in the health care records maintained by a health care provider;
 - B. Alters, erases, obliterates, deletes, removes or destroys a true material entry in the health care records maintained by a health care provider;
 - C. Knowingly omits to make a true material entry in the health care records maintained by a health care provider in violation of a duty to do so that is imposed by statute, standard of care or regulatory provision; or
 - D. Prevents the making of a true material entry or causes the omission of a true material entry in the health care records maintained by a health care provider.
2. Supplementation of information or correction of an error in health care records in a manner that reasonably discloses that the supplementation or correction was performed and that does not conceal or alter prior entries is not a violation of this section.
3. Falsifying health care records is a Class D crime, except as provided in subsection 4.
4. Falsifying health care records is a Class C crime if any reliance on a violation of this section causes serious bodily injury or impairment of the mental or behavioral condition of any person.
5. As used in this section, the following definitions apply.

- A. "Health care provider" means a hospital, clinic, nursing home or other facility in which skilled nursing care or medical services are prescribed by or performed under the general direction of persons licensed to practice medicine, dentistry, podiatry or surgery in this Nation and that is licensed or otherwise authorized by the laws of this Nation.
- B. "Health care record" means a record that relates to an individual's physical, mental or behavioral condition, personal or family medical history or medical treatment or the health care provided to that individual.
- C. "Material" means capable of altering the course or outcome of any subsequent reliance on the health care record.

Official Note for Section 707-A

- 4. Section 707-A of this section: "health care record" adopted by the Penobscot Nation Chief and Council to include all documentation created by IHS and in any health and wellness program. Not limited to health care records.
- 5. Section 707-A of this section: "health care facility" adopted by the Penobscot Nation Chief and Council to include and protect all IHS, tribal health and wellness facilities and offices and staff. Not limited to hospitals and healthcare facilities.
- 6. Section 707-A of this section: "health care provider" adopted by the Penobscot Nation Chief and Council to include IHS and health and wellness program employees.

§708. Negotiating a worthless instrument

- 1. A person is guilty of negotiating a worthless instrument if:
 - A. The person intentionally issues or negotiates a negotiable instrument knowing that it will not be honored by the maker or drawee. Violation of this paragraph is a Class E crime; or
 - B. The person violates paragraph A and:
 - (2) The face value of the written instrument or the aggregate value of the instruments is more than \$1,000 but not more than \$10,000. Violation of this subparagraph is a Class C crime;
 - (3) The face value of the negotiable instrument is more than \$500 but not more than \$1,000. Violation of this subparagraph is a Class D crime; or
 - (4) At the time of negotiating a worthless instrument, the person has 2 or more prior convictions for any combination of the Penobscot Nation or Maine offenses listed in this subparagraph or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this subparagraph in another jurisdiction. The Penobscot Nation or Maine offenses are: theft; any violation of this section; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702 or 703; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime.
- 2. Proof of the following gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person issuing or negotiating the instrument knew that it would not be honored:
 - A. The drawer had no account with the drawee at the time the instrument was negotiated;
 - B. Payment was refused by the drawee for lack of funds upon presentment made within the time frame specified in Title 11, section 3-1304, and the drawer failed to honor the drawer's contract within 5 days after actual receipt of a notice of dishonor, as defined in Title 11, section 3-1503, except that this time limit is tolled during one subsequent representment of the negotiable instrument; or
 - C. The drawer refuses to tender payment in the amount of the instrument within 5 days of receipt of a notice under this paragraph mailed by certified or registered mail evidenced by return

receipt at the address printed on the instrument or given at the time of issuance. The notice must be substantially as follows:

"You are hereby notified that the following instrument(s):

Number: Date: Amount: Name of Bank: drawn upon and payable to, (has)(have) been dishonored. Pursuant to Maine law, the Maine Revised Statutes, Title 17-A, section 708, subsection 2, you have 5 days from receipt of this notice to tender payment of the total amount of the instrument(s) plus the applicable service charge(s) of \$.....(.....dollars andcents) and any fee charged to the holder of the instrument(s) by a bank or financial institution as a result of the instrument(s) not being honored, the total amount due being \$.....(.....dollars and.....cents). Pursuant to Title 17-A, section 708, subsection 2, unless this amount is paid in full towithin 5 days after the actual receipt of this notice of dishonor, your failure to pay the amount owed gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that you knew that your instrument(s) would not be honored. Your failure to pay the amount owed could result in a report to a law enforcement agency for investigation and possible criminal prosecution for negotiating a worthless instrument in violation of Title 17-A, section 708, subsection 1."

2-A. The following evidentiary provisions apply.

- A. Proof that there is a purported stamp or writing of the drawee, payor bank or presenting bank on or accompanying the instrument that states "no account," "account closed" or some other terminology indicating that the instrument was not honored because no account existed gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person who issued or negotiated the instrument has no account with the drawee at the time the instrument was issued or negotiated.
 - B. Proof that there is a purported stamp or writing of the drawee, payor bank or presenting bank on or accompanying the instrument that states "insufficient funds," "NSF" or some other terminology indicating that the instrument was not honored due to lack of funds gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person who issued or negotiated the instrument had insufficient funds with the drawee at the time the instrument was issued or negotiated.
 - C. The purported stamp or writing of the drawee, payor bank or presenting bank on or accompanying a negotiable instrument is admissible in evidence in any court of the Nation, unless the defendant requests in writing at least 10 days before trial that the prosecution provide a qualified witness to testify as to why the instrument was not honored.
- 3.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
- A. "Issue" has the meaning provided in Title 11, section 3-1105, subsection (1).
 - A-1. "Drawee" has the meaning provided in Title 11, section 3-1103, subsection (1), paragraph (b).
 - A-2. "Drawer" has the meaning provided in Title 11, section 3-1103, subsection (1), paragraph (c).
 - B. "Negotiable instrument" has the meaning provided in Title 11, section 3-1104.
 - C. "Negotiation" and its variants have the meaning provided in Title 11, section 3-1201.

- 3-A.** Amounts of face value of negotiable instruments involved in violations of this section committed pursuant to one scheme or course of conduct, whether the instruments were issued or negotiated to the same person or several persons, may be aggregated to charge a single violation of this section of appropriate class. Subject to the requirement that the conduct of the defense may not be prejudiced by lack of fair notice or by surprise, the court may at any time order that a single aggregated count be considered as separate violations of this section. An aggregated count of violations of this section may not be deemed duplicitous because of such an order and no election

may be required. Prosecution may be brought in any venue in which one of the violations of this section that have been aggregated was committed.

CHAPTER 31

OFFENSES AGAINST PUBLIC ADMINISTRATION

§751. Obstructing government administration

1. A person is guilty of obstructing government administration if the person intentionally interferes by force, violence or intimidation or by any physical act with a public servant performing or purporting to perform an official function.
2. This section does not apply to:
 - A. Refusal by a person to submit to an arrest or detention;
 - B. Escape by a person from official custody, as defined in section 755; or
 - C. Intentional interference by a person under Title 21-A, section 674, subsection 2, paragraph E.
3. Obstructing government administration is a Class D crime.

§751-B. Refusing to submit to arrest or detention

1. A person is guilty of refusing to submit to arrest or detention if, with the intent to hinder, delay or prevent a law enforcement officer from effecting the arrest or detention of that person, the person:
 - A. Refuses to stop on request or signal of a law enforcement officer. Violation of this paragraph is a Class E crime;
 - B. Uses physical force against the law enforcement officer. Violation of this paragraph is a Class D crime; or
 - C. Creates a substantial risk of bodily injury to the law enforcement officer. Violation of this paragraph is a Class D crime.
2. It is a defense to prosecution under this section that the person reasonably believed that the person attempting to effect the arrest or detention was not a law enforcement officer. It is a defense to prosecution under subsection 1, paragraph A that the law enforcement officer acted unlawfully in attempting to effect the arrest or detention.

§752-A. Assault on an officer

1. A person is guilty of assault on an officer if:
 - A. He intentionally, knowingly or recklessly causes bodily injury to a law enforcement officer while the officer is in the performance of his official duties; or,
 - B. While in custody pursuant to an arrest or pursuant to a court order, the person commits an assault on a corrections officer, corrections supervisor or another member of the staff of an institution while the staff member is performing official duties. As used in this paragraph "assault" means the crime defined in section 207, subsection 1, paragraph A.
3. Assault on an officer is a Class C crime.

§752-B. Unlawful interference with law enforcement dogs

1. A person is guilty of unlawful interference with a law enforcement dog if the person intentionally or knowingly:
 - A. Kills, mutilates or permanently disables any dog that is in fact certified for law enforcement use and that the person knows or reasonably should have known is used for law enforcement purposes. Violation of this paragraph is a Class C crime; or
 - B. Torments, beats, strikes, injures, temporarily disables or otherwise mistreats any dog that is in fact certified for law enforcement use and that the person knows or reasonably should have known is used for law enforcement purposes. Violation of this paragraph is a Class D crime.

2. For the purposes of this section, a dog is certified for law enforcement use if the Nation has certified that the dog has satisfactorily completed requisite training for one or more law enforcement purposes.

§752-C. Assault on an emergency medical services person

1. A person is guilty of assault on an emergency medical services person if that person intentionally, knowingly or recklessly causes bodily injury to a person licensed pursuant to Title 32, chapter 2-B while that licensee is providing emergency medical care regardless of the location where the emergency medical care is provided.
3. Assault on an emergency medical services person is a Class C crime.

Official Note for Section 752-C

1. Section 752-C is adopted by the Penobscot Nation Chief and Council to include not only emergency medical services persons, but also IHS and all health and wellness program employees and staff.

§752-D. Unlawful interference with law enforcement horses

1. A person is guilty of unlawful interference with a law enforcement horse if the person intentionally or knowingly:
 - A. Kills, mutilates or permanently disables a horse that the person knows or reasonably should have known is used for law enforcement purposes. Violation of this paragraph is a Class C crime; or injures, temporarily disables or otherwise mistreats a horse that the person knows or reasonably should have known is used for law enforcement purposes. Violation of this paragraph is a Class D crime.

Official Note for Section 752-D

1. Section 752-D is adopted by the Penobscot Nation Chief and Council to include, not only law enforcement horse, but all law enforcement service animals.

§752-E. Assault on a firefighter

1. A person is guilty of assault on a firefighter if that person intentionally, knowingly or recklessly causes bodily injury to a firefighter while the firefighter is providing emergency services.
2. As used in this section, "firefighter" means a municipal firefighter or volunteer firefighter as defined in Title 30-A, section 3151, subsections 2 and 4, respectively. As used in this section, "provide emergency services" has the same meaning as in Title 30-A, section 3151, subsection 1-A.
3. Assault on a firefighter is a Class C crime.

§752-F. Assault in an emergency room

1. A person is guilty of assault in an emergency room if that person intentionally, knowingly or recklessly causes bodily injury to a person employed or contracted by a hospital licensed under Title 22, chapter 405 if the injury occurs in the hospital's designated emergency room.
2. Assault in an emergency room is a Class C crime.

Official Note for Section 752-F

1. Section 752-F is adopted by the Penobscot Nation Chief and Council to include, not only emergency rooms hospitals, but all IHS and tribal health and wellness facilities and offices and staff.

§753. Hindering apprehension or prosecution

1-B. A person is guilty of hindering apprehension or prosecution if, with the intent to hinder, prevent or delay the discovery, apprehension, prosecution, conviction or punishment of another person for the commission of a crime, the person:

A. Harbors or conceals the other person and:

- (2) The conduct of the other person has in fact resulted in the charge of murder or a Class A crime or in fact has rendered the other person liable to such a charge or the other person is charged or is liable to be charged with a Class B crime. Violation of this subparagraph is a Class C crime;
- (3) The other person is charged or is liable to be charged with a Class C crime. Violation of this subparagraph is a Class D crime; or
- (4) The other person is charged or is liable to be charged with a Class D or Class E crime. Violation of this subparagraph is a Class E crime;

B. Provides or aids in providing a dangerous weapon, transportation, disguise or other means of avoiding discovery or apprehension and:

- (2) The conduct of the other person has in fact resulted in the charge of murder or a Class A crime or in fact has rendered the other person liable to such a charge or the other person is charged or is liable to be charged with a Class B crime. Violation of this subparagraph is a Class C crime;
- (3) The other person is charged or is liable to be charged with a Class C crime. Violation of this subparagraph is a Class D crime; or
- (4) The other person is charged or is liable to be charged with a Class D or Class E crime. Violation of this subparagraph is a Class E crime;

C. Conceals, alters or destroys any physical evidence that might aid in the discovery, apprehension or conviction of the other person and:

- (2) The conduct of the other person has in fact resulted in the charge of murder or a Class A crime or in fact has rendered the other person liable to such a charge or the other person is charged or is liable to be charged with a Class B crime. Violation of this subparagraph is a Class C crime;
- (3) The other person is charged or is liable to be charged with a Class C crime. Violation of this subparagraph is a Class D crime; or
- (4) The other person is charged or is liable to be charged with a Class D or Class E crime. Violation of this subparagraph is a Class E crime;

D. Warns the other person of impending discovery or apprehension, except that this paragraph does not apply to a warning given in connection with an effort to bring another person into compliance with the law, and:

- (2) The conduct of the other person has in fact resulted in the charge of murder or a Class A crime or in fact has rendered the other person liable to such a charge or the other person is charged or is liable to be charged with a Class B crime. Violation of this subparagraph is a Class C crime;
- (3) The other person is charged or is liable to be charged with a Class C crime. Violation of this subparagraph is a Class D crime; or
- (4) The other person is charged or is liable to be charged with a Class D or Class E crime. Violation of this subparagraph is a Class E crime;

E. Obstructs by force, intimidation or deception anyone from performing an act that might aid in the discovery, apprehension, prosecution or conviction of the other person and:

- (2) The conduct of the other person has in fact resulted in the charge of murder or a Class A crime or in fact has rendered the other person liable to such a charge or the other person is charged or is liable to be charged with a Class B crime. Violation of this subparagraph is a Class C crime;
- (3) The other person is charged or is liable to be charged with a Class C crime. Violation of this subparagraph is a Class D crime; or

- (4) The other person is charged or is liable to be charged with a Class D or Class E crime. Violation of this subparagraph is a Class E crime; or
- F. Aids the other person to safeguard the proceeds of or to profit from such crime and:
 - (2) The conduct of the other person has in fact resulted in the charge of murder or a Class A crime or in fact has rendered the other person liable to such a charge or the other person is charged or is liable to be charged with a Class B crime. Violation of this subparagraph is a Class C crime;
 - (3) The other person is charged or is liable to be charged with a Class C crime. Violation of this subparagraph is a Class D crime; or
 - (4) The other person is charged or is liable to be charged with a Class D or Class E crime. Violation of this subparagraph is a Class E crime.
- 1-C. A person is guilty of hindering apprehension or prosecution if the person hinders the apprehension or prosecution of the other person for a violation of administrative release, probation, supervised release for sex offenders or parole by any means described in subsection 1-B, paragraphs A to F with the intent to hinder, prevent or delay discovery, apprehension, prosecution, revocation or punishment for the violation. The sentencing class for hindering apprehension or prosecution of the other person is one class less than the crime for which the other person was originally sentenced, except that if the crime for which the other person was originally sentenced is a Class E crime, hindering apprehension or prosecution is a Class E crime.
- 1-D. A person is guilty of hindering apprehension or prosecution if the person hinders the apprehension or prosecution of the other person for a violation of deferred disposition by any means described in subsection 1-B, paragraphs A to F with the intent to hinder, prevent or delay discovery, apprehension, prosecution, termination of the period of deferment or punishment for the violation or crime to which the other person originally pled guilty. The sentencing class for hindering apprehension or prosecution of the other person is one class less than the crime for which the other person originally pled guilty, except that if the crime to which the other person originally pled guilty is a Class E crime, hindering apprehension or prosecution is a Class E crime.
- 2-A. Hindering apprehension or prosecution when the other person has committed a crime against another jurisdiction is graded as in subsection 1-B. For purposes of this subsection, the classification of the crime of the other jurisdiction is determined according to the formula contained in section 4-A, subsection 3 as if it were a crime of this jurisdiction outside this Code.
- 3. As used in subsection 1-B, "crime" includes juvenile offenses. The sentencing class for hindering the apprehension or prosecution of a juvenile is determined in the same manner as if the juvenile were a person 18 years of age or older, provided that if the offense committed by the juvenile would not have been a crime if committed by a person 18 years of age or older, hindering apprehension or prosecution is a Class E crime.

§754. Obstructing criminal prosecution

- 1. A person is guilty of obstructing criminal prosecution if:
 - A. The person uses force, violence or intimidation, or the person promises, offers or gives any pecuniary benefit or anything of benefit to another, with the intent to induce the other:
 - (1) To refrain from initiating a criminal prosecution or juvenile proceeding; or
 - (2) To refrain from continuing with a criminal prosecution or juvenile proceeding that the other person has initiated; or
 - B. The person solicits, accepts or agrees to accept any pecuniary benefit or anything of benefit to another in consideration of doing any of the things specified in this subsection.
- 2. This section does not apply to conduct authorized by Title 15, section 891.
- 3. It is an affirmative defense to prosecution under this section that:
 - A. The charge in fact made or liable to be made was for a Class D or Class E crime or a comparable juvenile offense; and
 - B. The pecuniary benefit did not exceed an amount which the actor believed to be due as restitution or indemnification for harm caused by the offense.

4. Obstructing criminal prosecution is a Class C crime.

§755. Escape

1. A person is guilty of escape if without official permission the person intentionally:
 - A. Leaves official custody or intentionally fails to return to official custody following temporary leave granted for a specific purpose or a limited period. Violation of this paragraph is a Class C crime;
- 1-B. A person is guilty of escape from supervised community confinement granted pursuant to Title 34-A, section 3036-A if without official permission the person intentionally:
 - A. Fails to return to the correctional facility from which transfer was made upon the direction of the Commissioner of Corrections or otherwise intentionally violates a curfew, residence, time or travel restriction. Violation of this paragraph is a Class C crime;
- 1-C. A person is guilty of escape from furlough or other rehabilitative program authorized under Title 34-A, section 3035 if the person intentionally:
 - A. Goes to a location other than that permitted by the terms of the leave. Violation of this paragraph is a Class D crime;
- 1-D. A person is guilty of escape from arrest or escape during transport following arrest if without official permission the arrested person intentionally:
 - A. Leaves following arrest prior to being transported, or while being transported to a jail, police station or other initial place of detention or to a courthouse when a court has ordered that the person be arrested and transported directly to court. Violation of this paragraph is a Class D crime;
- 1-E. A person is guilty of escape from the community confinement monitoring program granted pursuant to Title 30-A, section 1659-A if without official permission the person intentionally:
 - A. Leaves or fails to return within 12 hours to that person's residence or other designated area in which that person is monitored. Violation of this paragraph is a Class C crime;

A sentence imposed for a violation of this section is subject to the requirements of section 1609-A.
2. In the case of escape from arrest, it is a defense that the arresting officer acted unlawfully in making the arrest. In all other cases, it is no defense that grounds existed for release from custody that could have been raised in a legal proceeding.
3. As used in this section, "official custody" means arrest, custody in, or on the way to or from a courthouse or a jail, police station, house of correction, or any institution or facility under the control of the Department of Corrections, or under contract with the department for the housing of persons sentenced to imprisonment, the custody of any official of the department, the custody of any institution in another jurisdiction pursuant to a sentence imposed under the authority of section 2303, subsection 3 or any custody pursuant to court order. A person on a parole or probation status is not, for that reason alone, in "official custody" for purposes of this section.
- 3-A. The following provisions govern prosecution for escape.
 - A. Prosecution for escape or attempted escape from any institution included in subsection 3 must be in the county in which the institution is located.
 - B. Prosecution for escape or attempted escape of a person who has been transferred from one institution to another must be in the county in which the institution the person was either transferred from or transferred to is located.
 - C. Prosecution for an escape or attempted escape for failure to return to official custody following temporary leave granted for a specific purpose or a limited period must be in the county in which the institution from which the leave was granted is located or in any county to which leave was granted.
 - E. Prosecution for escape or attempted escape from supervised community confinement must be in the county in which the institution from which the transfer to supervised community confinement was granted is located or in any county to which the transfer to supervised community confinement was granted.

- F. Prosecution for escape or attempted escape from the community confinement monitoring program must be in the county in which the institution from which the transfer to the community confinement monitoring program was granted is located or in any county to which the transfer to the community confinement monitoring program was granted.

Notwithstanding other provisions of this section, in all cases of escape, prosecution may be in the county or division in which the person who has escaped was apprehended.

§756. Aiding escape

1. A person is guilty of aiding escape if, with the intent to aid another person to violate section 755:
 - A. The person conveys or attempts to convey to the other person any tool or other thing that may be used to facilitate a violation of section 755. Violation of this paragraph is a Class C crime;
 - B. The person furnishes plans, information or other assistance to the other person. Violation of this paragraph is a Class C crime; or
 - C. The person whose official duties include maintaining persons in official custody, as defined in section 755, subsection 3, permits such violation or an attempt at such violation. Violation of this paragraph is a Class C crime.
4. A person may not be indicted or charged in an information with both a violation of this section and as an accomplice to a violation of section 755.

§757. Trafficking in prison contraband

1. A person is guilty of trafficking in prison contraband if:
 - A. That person intentionally conveys or attempts to convey contraband to any person in official custody; or
 - B. Being a person in official custody, the person intentionally makes, obtains or possesses contraband.
2. As used in this section, "official custody" has the same meaning as in section 755. As used in this section, "contraband" means a dangerous weapon, any tool or other item that may be used to facilitate a violation of section 755 or anything that a person confined in official custody is prohibited by statute from making, possessing or trafficking in or a scheduled drug as defined in section 1101, subsection 11, unless the drug was validly prescribed to the person in official custody and was approved for use by the person pursuant to the procedures of the custodial agency.
3. Trafficking in prison contraband is a Class C crime.

§757-A. Trafficking of tobacco in adult correctional facilities

1. A person is guilty of trafficking tobacco in an adult correctional facility if:
 - A. That person intentionally conveys or attempts to convey tobacco or tobacco products to a person confined in an adult correctional facility that has banned the use of tobacco or tobacco products by prisoners; or
 - B. That person is confined in an adult correctional facility that has banned the use of tobacco or tobacco products by prisoners and the person intentionally obtains or possesses tobacco or tobacco products.
2. As used in this section, "adult correctional facility" means a county jail or correctional facility other than a juvenile facility under the control of the Department of Corrections.
3. Trafficking of tobacco in an adult correctional facility is a Class E crime.

§757-B. Trafficking of alcoholic beverages in adult correctional facilities

1. A person is guilty of trafficking of an alcoholic beverage in an adult correctional facility if:
 - A. That person intentionally conveys or attempts to convey an alcoholic beverage to a person confined in an adult correctional facility; or
 - B. That person is confined in an adult correctional facility and the person intentionally makes, obtains or possesses an alcoholic beverage.

2. As used in this section, "adult correctional facility" means a county jail or correctional facility other than a juvenile facility under the control of the Department of Corrections.
3. Trafficking of an alcoholic beverage in an adult correctional facility is a Class E crime.

Official Note for Section 757

1. Section 757 "prison" is adopted by the Penobscot Nation Chief and Council to include, not only correctional facilities and jails, but all tribal court offices and facilities.
2. Section 757-A, B "adult correctional facilities" is adopted by the Penobscot Nation Chief and Council to include, not only correctional facilities and jails, but all tribal court offices and facilities.

§757-C. Trafficking in contraband in a state hospital

1. A person is guilty of trafficking in contraband in a state hospital if:
 - A. That person intentionally conveys or attempts to convey a dangerous weapon to any patient at a state hospital. Violation of this paragraph is a Class C crime;
 - B. That person intentionally conveys or attempts to convey contraband other than a dangerous weapon to any patient at a state hospital. Violation of this paragraph is a Class D crime; or
 - C. Being a patient at a state hospital, that person intentionally makes, obtains or possesses contraband. Violation of this paragraph is a Class D crime.
2. As used in this section, "contraband" means any tool or other item that may be used to facilitate a violation of section 755, a dangerous weapon or a scheduled drug as defined in section 1101, subsection 11, unless, in the case of a patient at a state hospital, the drug was validly prescribed to the patient and was approved for use by that patient pursuant to the procedures of the state hospital. As used in this section, "state hospital" means the Riverview Psychiatric Center or the Dorothea Dix Psychiatric Center.

Official Note for Section 757-C

7. Section 757-C A of this section: "state hospital" adopted by the Penobscot Nation Chief and Council to include all IHS, tribal health and wellness facilities and offices and staff. Not limited to "state hospitals" and healthcare facilities.

§758. Obstructing report of crime or injury

1. A person is guilty of obstructing the report of a crime or injury if that person intentionally, knowingly or recklessly disconnects, damages, disables, removes or uses physical force or intimidation to block access to a telephone, radio or other electronic communication device with the intent to obstruct, prevent or interfere with another person's:
 - A. Report to a law enforcement agency; or
 - B. Request for an ambulance or emergency medical assistance to a governmental agency, hospital, physician or other medical service provider.
2. It is an affirmative defense to prosecution under this section that the actor reasonably believed that the actor's conduct was necessary to prevent a false public alarm or report as described in section 509.
3. Obstructing report of crime or injury is a Class D crime.

§759. Violation of interstate compact for adult supervision

1. A person is guilty of violating an interstate compact for adult offender supervision if that person, after being convicted and sentenced for a crime in a state that is a member of an interstate compact for adult offender supervision and subsequently released on probation or parole, resides in this

Nation without complying with the requirements of the interstate compact as enacted by the sentencing state.

2. Violation of an interstate compact for adult offender supervision is a Class D crime.

§760. Failure to report sexual assault of person in custody

1. A person is guilty of failure to report a sexual assault of a person in custody if that person is a member of the staff of a hospital, prison or other institution and that staff person knows that a person detained in that institution is the victim of a crime of sexual assault that occurred while the detained person was in the institution and, in fact, that staff person does not report that crime to an appropriate criminal justice agency.
2. For purposes of this section, "sexual assault" means a crime under chapter 11.
- 2-A. It is an affirmative defense to prosecution under this section that the defendant knew that the crime of sexual assault had already been reported to an appropriate criminal justice agency by another mandated reporter.
3. Failure to report a sexual assault of a person in custody is a Class E crime.

CHAPTER 33

ARSON AND OTHER PROPERTY DESTRUCTION

§804. Failure to control or report a dangerous fire

1. A person is guilty of failure to control or report a dangerous fire if:
 - A. He starts, causes or maintains a fire or explosion, and knowing that its spread would endanger human life or the property of another, he fails to take reasonable measures to put out or control the fire or to give a prompt fire alarm;
 - B. Knowing that a fire is endangering a substantial amount of property of another, as to which he has an official, contractual, or other legal duty, he fails to take reasonable measures to put out or control the fire or to give prompt fire alarm; or
 - C. Knowing that a fire is endangering human life, he fails to take reasonable measures to save life by notifying the persons endangered or by taking reasonable measures to put out or control the fire or by giving a prompt fire alarm.
2. Failure to control or report a dangerous fire is a Class D crime.

§805. Aggravated criminal mischief

1. A person is guilty of aggravated criminal mischief if that person:
 - A. Intentionally, knowingly or recklessly damages or destroys property of another in an amount exceeding \$2,000 in value, having no reasonable ground to believe that the person has a right to do so;
 - B. Intentionally, knowingly or recklessly damages or destroys property in an amount exceeding \$2,000 in value, to enable any person to collect insurance proceeds for the loss caused;
 - C. Intentionally, knowingly or recklessly damages, destroys or tampers with the property of a law enforcement agency, fire department or supplier of gas, electric, steam, water, transportation, sanitation or communication services to the public, having no reasonable ground to believe that the person has a right to do so, and thereby causes a substantial interruption or impairment of service rendered to the public;
 - D. Intentionally, knowingly or recklessly damages, destroys or tampers with property of another and thereby recklessly endangers human life;
 - E. Intentionally, knowingly or recklessly damages or destroys property of another by fire, having no reasonable ground to believe that the person has a right to do so, and the property damaged

or destroyed is neither a dwelling place as defined in section 2, subsection 10 nor a structure as defined in section 2, subsection 24; or

- F. Intentionally damages, destroys or tampers with the property of another, having no reasonable ground to believe that the person has a right to do so, for the purpose of causing substantial harm to the health, safety, business, calling, career, financial condition, reputation or personal relationships of the person with the property interest or any other person.

1-A. As used in this section, "property of another" has the same meaning as in section 352, subsection 4.

1-B. As used in this section, "value", if the property is destroyed, shall be determined pursuant to section 352, subsection 5. If the property is damaged, "value" shall be determined by the cost of repair unless that determination exceeds the determination of the value of the property had it been destroyed, in which case the property shall be deemed destroyed for purposes of this subsection. Amounts of value involved in mischiefs may be aggregated in the same manner as provided in section 352, subsection 5, paragraph E. Prosecution for an aggregated aggravated criminal mischief may be brought in any venue in which one of the criminal mischiefs which have been aggregated was committed.

2. Aggravated criminal mischief is a Class C crime.

§806. Criminal mischief

1. A person is guilty of criminal mischief if that person intentionally, knowingly or recklessly:

- A. Damages or destroys the property of another, having no reasonable grounds to believe that the person has a right to do so; damages or destroys property to enable any person to collect insurance proceeds for the loss caused; or tampers with the property of another, having no reasonable grounds to believe that the person has the right to do so, and thereby impairs the use of that property;
- B. Damages, destroys or tampers with property of a law enforcement agency, fire department, or supplier of gas, electric, steam, water, transportation, sanitation or communication services to the public, having no reasonable grounds to believe that the person has a right to do so, and by such conduct recklessly creates a risk of interruption or impairment of services rendered to the public; or
- C. Drives or places in any tree or saw log, without the prior consent of the owner, any iron, steel or other substance sufficiently hard to damage saws or wood manufacturing or processing equipment with intent to cause inconvenience, annoyance or alarm to any other person.

1-A. As used in this section, "property of another" has the same meaning as in section 352, subsection 4.

3. Criminal mischief is a Class D crime.

CHAPTER 35

SEX TRAFFICKING, PROSTITUTION AND PUBLIC INDECENCY

§851. Definitions

As used in this chapter:

1. "Prostitution" means engaging in, or agreeing to engage in, or offering to engage in a sexual act or sexual contact, as those terms are defined in section 251, in return for a pecuniary benefit to be received by the person being prostituted or a 3rd person;
- 1-A. "Engages a person for prostitution" means providing, offering to provide or agreeing to provide, either to the person who is sought for an act of prostitution or to a 3rd person, pecuniary benefit in return for a sexual act or sexual contact as those terms are defined in section 251;
2. "Promotes prostitution" means:
 - A. Causing or aiding another to commit or engage in prostitution, other than as a patron;
 - B. Publicly soliciting patrons for prostitution. Publicly soliciting patrons for prostitution includes, but is not limited to, an offer, made in a public place, to engage in a sexual act or sexual contact, as those terms are defined in section 251, in return for a pecuniary benefit to be received by the person making the offer or a 3rd person;
 - C. Providing persons for purposes of prostitution;
 - D. Leasing or otherwise permitting a place controlled by the defendant, alone or in association with others, to be regularly used for prostitution;
 - E. Owning, controlling, managing, supervising or otherwise operating, in association with others, a house of prostitution or a prostitution business;
 - F. Transporting a person into or within the Nation with the intent that such other person engage in prostitution; or
 - G. Accepting or receiving, or agreeing to accept or receive, a pecuniary benefit pursuant to an agreement or understanding with any person, other than with a patron, whereby the person participates or the person is to participate in the proceeds of prostitution.

§853-B. Engaging person for prostitution

1. A person is guilty of engaging a person for prostitution if:
 - A. The person engages a person for prostitution within the meaning of section 851, subsection 1-A. Violation of this paragraph is a Class E crime; or
 - B. The person violates paragraph A and, at the time of the offense, the person has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this paragraph, the date of the prior conviction may not precede the commission of the offense by more than 2 years. Violation of this paragraph is a Class D crime.

§854. Indecent conduct

1. A person is guilty of indecent conduct if:
 - A. In a public place:
 - (1) The actor engages in a sexual act, as defined in section 251. Violation of this subparagraph is a Class E crime;
 - (2) The actor knowingly exposes the actor's genitals under circumstances that in fact are likely to cause affront or alarm. Violation of this subparagraph is a Class E crime;
 - (3) The actor violates subparagraph (1) and the actor has 2 or more prior convictions for any combination of the following: violating this section or section 256 or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in

- this subparagraph in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class D crime; or
- (4) The actor violates subparagraph (2) and the actor has 2 or more prior convictions for any combination of the following: violating this section or section 256 or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this subparagraph in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class D crime;
 - B. In a private place, the actor exposes the actor's genitals with the intent that the actor be seen from a public place or from another private place. Violation of this paragraph is a Class E crime;
 - C. In a private place, the actor exposes the actor's genitals with the intent that the actor be seen by another person in that private place under circumstances that the actor knows are likely to cause affront or alarm. Violation of this paragraph is a Class E crime;
 - D. The actor violates paragraph B and the actor has 2 or more prior convictions for any combination of the following: violating this section or section 256 or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this paragraph in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class D crime; or
 - E. The actor violates paragraph C and the actor has 2 or more prior convictions for any combination of the following: violating this section or section 256 or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses listed in this paragraph in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class D crime.
- 2. For purposes of this section "public place" includes, but is not limited to, motor vehicles that are on a public way.
 - 2-A. It is a defense to prosecution under subsection 1, paragraph C, that the other person previously lived or currently is living in the same household as the actor.

§855. Commercial sexual exploitation of minor or person with mental disability

- 1. A person is guilty of commercial sexual exploitation of a minor if:
 - A. The person, in return for an act of prostitution, gives, offers to give or agrees to give a pecuniary benefit either to the person being prostituted or to a 3rd person and the person being prostituted has not in fact attained 18 years of age or the person knows or believes that the person being prostituted has not attained 18 years of age. Violation of this paragraph is a Class C crime.
- 3. A person is guilty of commercial sexual exploitation of a person with a mental disability if:
 - A. The person, in return for an act of prostitution, gives, offers to give or agrees to give a pecuniary benefit either to the person being prostituted or to a 3rd person and the person being prostituted suffers from a mental disability that is reasonably apparent or known to the actor and that in fact renders the person with a mental disability substantially incapable of appraising the nature of the conduct or conduct involved. Violation of this paragraph is a Class C crime.

CHAPTER 37

FRAUD

§901. Deceptive business practices

1. A person is guilty of deceptive business practices if, in the course of engaging in a business, occupation or profession, he intentionally:
 - A. Uses or possesses with the intent to use, a false weight or measure, or any other device which is adjusted or calibrated to falsely determine or measure any quality or quantity;
 - B. Sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service
 - C. Takes more than the represented quantity of any commodity or service when as buyer he furnished the weight or measure;
 - D. Sells, offers or exposes for sale any commodity which is adulterated or mislabelled;
 - F. Sells, offers or exposes for sale a motor vehicle on which the manufacturer's serial number has in fact been altered, removed or obscured;
 - G. Makes or causes to be made a false statement of material fact in any advertisement addressed to the public or to a substantial number of persons, in connection with the promotion of his business, occupation or profession or to increase the consumption of specified property or service;
 - H. Offers property or service, in any manner including advertising or other means of communication, as part of a scheme or plan with the intent not to sell or provide the advertised property or services
 - (1) at all;
 - (2) at the price or of the quality offered;
 - (3) in a quantity sufficient to meet the reasonably expected public demand unless the advertisement or communication states the approximate quantity available; or
 - I. Conducts, sponsors, organizes or promotes a publicly exhibited sports contest with the knowledge that he or another person has tampered with any person, animal or thing that is part of the contest, with the intent to prevent the contest from being conducted in accordance with the rules and usages purporting to govern it, or with the knowledge that any sports official or sports participant has accepted or agreed to accept any benefit from another person upon an agreement or understanding that he will thereby be influenced not to give his best efforts or that he will perform his duties improperly.
2. It is a defense to a prosecution under subsection 1, paragraphs G and H, that a television or radio broadcasting station, or a publisher or printer of a newspaper, magazine or other form of printed material, which broadcasts, publishes or prints a false, misleading advertisement did so without knowledge of the advertiser's intent.
3. As used in this section:
 - A. "Adulterated" means varying from the standard of composition or quality prescribed for the substance by statute or by lawfully promulgated administrative regulation, or if none, as set by established commercial usage;
 - B. "Mislabelled" means having a label or trademark varying from the standard of truth and disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage. "Mislabelled" includes but is not limited to counterfeiting or the unauthorized reproducing of a trademark.
- 3-A. A commodity or item bearing marks in violation of this section or personal property, including, but not limited to, tools, machines, equipment, instrumentalities or vehicles of any kind, employed or used in connection with the violation is contraband and may be seized by a law enforcement

officer. A person convicted of a violation of this section forfeits to the Nation all rights, privileges, interests and claims to property seized under this subsection.

4. Deceptive business practices is a Class D crime.

§901-A. Deceptive insurance practices

1. A person is guilty of deceptive insurance practices if in the course of engaging in the business of insurance that person intentionally makes a false statement with respect to a material fact concerning, or intentionally materially alters, any of the following:
 - A. A document filed with the Superintendent of Insurance or the insurance regulatory official or agency of another jurisdiction with respect to:
 - (1) The financial condition of an insurer;
 - (2) The formation, acquisition, merger, consolidation, dissolution or withdrawal from one or more lines of insurance in all or part of this State by an insurer;
 - (3) The issuance of written evidence of insurance; or
 - (4) The reinstatement of an insurance policy;
 - B. A document submitted by an insured, claimant or applicant to an insurer, insurance producer or other person; or
 - C. A document or report filed with a law enforcement agency.
2. A person is guilty of deceptive insurance practices if in the course of engaging in the business of insurance that person intentionally does any of the following:
 - A. Transacts the business of insurance in this Nation without proper licensure, certification or authorization;
 - B. Destroys, conceals, removes or otherwise impairs the verity or availability of any records of an insurer with the intent to deceive; or
 - C. Solicits or accepts new or renewal insurance risks on behalf of an insurer or the person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction
3. Deceptive insurance practices is a Class D crime.

§902. Defrauding a creditor

1. A person is guilty of defrauding a creditor if:
 - A. The person destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest, as defined in Title 11, section 1-1201, subsection (35), with the intent to hinder enforcement of that interest;
 - B. Knowing that proceedings have been or are about to be instituted for the appointment of an administrator, he
 - (1) destroys, removes, conceals, encumbers, transfers or otherwise deals with any property with a purpose to defeat or obstruct the claim of any creditor; or
 - (2) presents in writing to any creditor or to an administrator, any false statement relating to the debtor's estate, knowing that a material part of such statement is false.
2. As used in this section, "administrator" means an assignee for the benefit of creditors, a receiver, or trustee in bankruptcy or any other person entitled to administer property for the benefit of creditors.
3. Defrauding a creditor is a Class D crime.

§903. Misuse of entrusted property

1. A person is guilty of misuse of entrusted property if that person deals with property that has been entrusted to that person as a fiduciary, or property of the government or of a financial institution, in a manner that that person knows is a violation of that person's duty and that involves a substantial risk of loss to the owner or to a person for whose benefit the property was entrusted.
2. As used in this section "fiduciary" includes any person carrying on fiduciary functions on behalf of an organization that is a fiduciary.

3. Except as provided in subsection 4, misuse of entrusted property is a Class D crime.
 4. If a misuse of entrusted property results in the loss of a vulnerable person's property or the loss of property entrusted to a person for the benefit of a vulnerable person and, at the time of the offense, the owner or the beneficiary of the property is a vulnerable person:
 - A. If the value of the property is more than \$1,000 but not more than \$10,000, the misuse of entrusted property is a Class C crime;
- As used in this subsection, "vulnerable person" means an incapacitated adult as defined in Title 22, section 3472, subsection 10 or a dependent adult as defined in Title 22, section 3472, subsection 6.

§904. Private bribery

1. A person is guilty of private bribery if:
 - A. He promises, offers or gives any pecuniary benefits to
 - (1) an employee or agent with the intention to influence his conduct adversely to the interest of the employer or principal of the agent or employee;
 - (2) a hiring agent or an official or employee in charge of employment upon agreement or understanding that a particular person, including the actor, shall be hired, retained in employment or discharged or suspended from employment;
 - (3) a fiduciary with the intent to influence him to act contrary to his fiduciary duty;
 - (4) a sports participant with the intent to influence him not to give his best efforts in a sports contest;
 - (5) a sports official with the intent to influence him to perform his duties improperly;
 - (6) a person in a position of trust and confidence in his relationship to a 3rd person, with the intention that the trust or confidence will be used to influence the 3rd person to become a customer of the actor, or as compensation for the past use of such influence; or
 - B. He knowingly solicits, accepts or agrees to accept any benefit, the giving of which would be criminal under subsection 1, paragraph A.
2. Private bribery is a Class D crime.

§905-A. Misuse of identification

1. A person is guilty of misuse of identification if, in order to obtain confidential information, property or services, the person intentionally or knowingly:
 - A. Presents or uses a credit or debit card that is stolen, forged, canceled or obtained as a result of fraud or deception;
 - B. Presents or uses an account, credit or billing number that that person is not authorized to use or that was obtained as a result of fraud or deception; or
 - C. Presents or uses a form of legal identification that that person is not authorized to use.
2. It is an affirmative defense to prosecution under this section that the person believed in good faith that the person was authorized to present or use the card, number or legal identification.
3. Proof of actual or constructive notice of cancellation gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person who presented the canceled credit or debit card knew it had been canceled.
4. As used in this section, "legal identification" includes a social security card, social security number, birth certificate, driver's license, government-issued identification card, oral statement of full name and date of birth or any other means of identifying a person that is generally accepted as accurate and reliable.
5. Misuse of identification is a Class D crime.

§905-B. Misuse of scanning device or reencoder

1. A person is guilty of misuse of a scanning device or a reencoder if the person intentionally or knowingly uses a scanning device or a reencoder without the permission of the authorized payment card user whose card information is scanned or reencoded and with the intent to defraud or deceive

the authorized payment card user, the issuer of the authorized payment card user's payment card or another person.

2. As used in this section, the following terms have the following meanings.
 - A. "Authorized payment card user" means a person with the authority or permission to use a payment card.
 - B. "Payment card" means a credit card, charge card, debit card, hotel key card or stored value card or any other card that is issued to an authorized payment card user that allows the user to obtain, purchase or receive goods, services, money or anything else of value.
 - C. "Reencoder" means an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of another payment card or any electronic medium that allows an authorized transaction to occur.
 - D. "Scanning device" means a scanner, reader or any other electronic device that is used to access, read, scan, obtain, memorize or store, temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card.
3. Misuse of a scanning device or a reencoder is a Class D crime.

§905-C. Misuse of public benefits instrument

1. A person is guilty of misuse of a public benefits instrument if the person knowingly:
 - A. Transfers a public benefits instrument without authorization of the agency issuing the instrument; or
 - B. Obtains or possesses a public benefits instrument that was obtained without authorization of the agency issuing the instrument.
2. As used in this section, "public benefits instrument" means electronic benefits transfer cards, coupons, vouchers and any other means for distributing benefits from the following programs:
 - A. The municipal general assistance program under Title 22, chapter 1161;
 - B. The TANF program under Title 22, chapter 1053-B;
 - C. The statewide Supplemental Nutrition Assistance Program under Title 22, section 3104;
 - D. The child care subsidies under Title 22, chapter 1052-A; or
 - E. The Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966.
3. Misuse of a public benefits instrument is a Class D crime.

§906. Use of slugs

1. A person is guilty of use of slugs if:
 - A. With intent to defraud, he inserts or deposits a slug in a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle; or
 - B. He makes, possesses or disposes of a slug with intent to enable a person to insert or deposit it in a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle.
2. As used in this section, "slug" means an object or article which, by virtue of its size, shape or other quality, is capable of being inserted or deposited as an improper substitute for a genuine coin, bill, pass, key or token in a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle which is designed automatically to offer, provide, assist in providing or permit the acquisition of some property or services in return for the insertion or deposit of a genuine coin, bill, pass, key or token.
3. Use of slugs is a Class D crime.

§907. Possession or transfer of theft devices

1. A person is guilty of possession or transfer of theft devices if:
 - A. The person possesses or makes any device, instrument, apparatus or other article that is designed or primarily useful for advancing or facilitating the commission of theft, with the intent to use

- such device, instrument, apparatus or other article to commit any such criminal offense. Violation of this paragraph is a Class E crime; or
- B. The person transfers or possesses with the intent to transfer any device described in paragraph A that the person knows is designed or primarily useful for the commission of theft. Violation of this paragraph is a Class D crime.

§908. Home construction or repair fraud

1. A home construction or repair seller is guilty of home construction or repair fraud if the seller knowingly enters into an agreement or contract, written or oral, with any person for home construction or repair services and the seller, at the time of entering into that agreement or contract:
 - A. Intentionally misrepresents a material fact relating to the terms of the agreement or contract or misrepresents a preexisting or existing condition of any portion of the property that is the subject of the home construction or repair services. Violation of this paragraph is a Class D crime;
 - B. Intentionally creates or reinforces an impression relating to the terms of the agreement or contract that is false and that the seller does not believe to be true or fails to correct such an impression that the seller had previously created or reinforced. Violation of this paragraph is a Class D crime;
 - C. Intentionally promises performance under the terms of the agreement or contract that the seller does not intend to perform or that the seller knows will not be performed. Violation of this paragraph is a Class D crime;
 - D. Intentionally uses or employs deception, false pretense or false promise in securing the agreement or contract. Violation of this paragraph is a Class D crime;
 - E. Knows that the property that is the subject of the home construction or repair services was previously damaged or destroyed by the seller with the intent to obtain the agreement or contract. Violation of this paragraph is a Class D crime;
 - F. Violates paragraph A and the person has 2 or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime;
 - G. Violates paragraph B and the person has 2 or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime;
 - H. Violates paragraph C and the person has 2 or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime;
 - I. Violates paragraph D and the person has 2 or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime; or
 - J. Violates paragraph E and the person has 2 or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime.
3. As used in this section, unless otherwise indicated, the following terms have the following meanings.
 - A. "Home construction or repair services" means building or constructing a residence and fixing, replacing, altering, converting, modernizing, improving or making an addition to real property primarily designed or used as a residence. "Home construction or repair services" includes not

only structural work but also the construction, installation, replacement, improvement and cleaning of driveways, swimming pools, porches, kitchens, chimneys, chimney liners, garages, fences, fall-out shelters, central air conditioning, central heating, boilers, furnaces, hot water heaters, electric wiring, sewers, carpeting, plumbing fixtures, storm doors, storm windows, siding or awnings and other improvements to structures within the residence or upon the land adjacent to the residence, including tree trimming.

- B. "Home construction or repair seller" or "seller" means a person, partnership, corporation, business, trust or other legal entity that sells or provides home construction or repair services.
- C. "Residence" means a single-family or multifamily dwelling, including a single-family home, apartment building, condominium, duplex or townhouse that is used or intended to be used by its occupants as a dwelling place.

§909. Possession or transfer of automated sales suppression device

1. A person is guilty of possession or transfer of an automated sales suppression device if:
 - A. The person knowingly possesses, purchases or owns any automated sales suppression device or phantom-ware. Violation of this paragraph is a Class D crime; or
 - B. The person knowingly manufactures, sells, installs or transfers any automated sales suppression device or phantom-ware or possesses, purchases or owns with the intent to sell, install or transfer any automated sales suppression device or phantom-ware. Violation of this paragraph is a Class C crime.
2. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
 - A. "Automated sales suppression device" means a computer software program, which may be stored on magnetic or optical media, accessed through the Internet or accessed through any other means, that is designed or used to falsify the electronic records of an electronic cash register or other point-of-sale system, including, but not limited to, transaction data and transaction reports.
 - B. "Electronic cash register" means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling or processing retail sales transaction data.
 - C. "Phantom-ware" means a hidden, preinstalled or installed programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that can be used to create a virtual 2nd cash register or to eliminate or manipulate transaction records, which may or may not be preserved in digital formats, can represent either the true or the manipulated records of transactions in the electronic cash register and is intended to falsify the electronic records of an electronic cash register or other point-of-sale system.
 - D. "Transaction data" includes a description of items purchased by a customer; the price for each item; a taxability determination for each item; a segregated tax amount for each taxed item; the amount of cash or credit tendered; the net amount returned to the customer in change; the date and time of the purchase; the name, address and identification number of the vendor; and the receipt or invoice number of the transaction.
 - E. "Transaction report" means a report that includes, but is not limited to, sales, taxes collected, methods of payment and voided sales at an electronic cash register that is printed on cash register tape at the end of a day or shift or a report that includes every action at an electronic cash register that is stored electronically.

CHAPTER 39

UNLAWFUL GAMBLING

§951. Inapplicability of chapter

Any person licensed or registered by the Gambling Control Unit as provided in Title 17, chapter 13-A or chapter 62, or authorized to operate or conduct a raffle pursuant to Title 17, section 1837-A or licensed to operate sports wagering pursuant to Title 8, chapter 35 is exempt from the application of the provisions of this chapter insofar as that person's conduct is within the scope of the license or registration.

§952. Definitions

As used in this chapter, the following definitions apply:

1. **"Advance gambling activity."** A person "advances gambling activity" if, acting other than as a player or a member of the player's family residing with a player in cases in which the gambling takes place in their residence, he engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes, but is not limited to, bookmaking, conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. A person also advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits that activity to occur or continue, or makes no effort to prevent its occurrence or continuation.
2. **"Bookmaking"** means advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events.
3. **"Contest of chance."** "Contest of chance" means any game, contest, scheme or device in which:
 - A. A person stakes or risks something of value for the opportunity to win something of value;
 - B. The rules of operation or play require an event the result of which is determined by chance, outside the control of the contestant or participant; and
 - C. Chance enters as an element that influences the outcome in a manner that can not be eliminated through the application of skill.

For the purposes of this subsection, "an event the result of which is determined by chance" includes but is not limited to a shuffle of a deck or decks of cards, a roll of a die or dice or a random drawing or generation of an object or objects that may include, but are not limited to, a card or cards, a die or dice, a number or numbers or simulations of any of these. A shuffle of a deck or decks of cards, a roll of a die or dice, a random drawing or generation of an object or objects or some other event the result of which is determined by chance that is employed to determine impartially the initial order of play in a game, contest, scheme or device does not alone make a game, contest, scheme or device a game of chance.

4. **"Gambling."** A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including but not limited to contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health or accident insurance.

5. "Gambling device" means any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition.
- 5-A. "Illegal gambling machine" means any machine, including electronic devices, however operated:
 - A. The internal mechanism or components of which when set in motion or activated may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tickets or something of value;
 - B. That is used to advance gambling activity;
 - C. That is not a machine that a person may lawfully operate pursuant to a license that has been issued under Title 17, chapter 62 or that is operated by the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations; and
 - D. That is not a slot machine registered pursuant to Title 8, section 1020 and owned by a slot machine distributor licensed pursuant to Title 8, section 1013.
6. "Lottery" means an unlawful gambling scheme in which:
 - A. The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones; and
 - B. The winning chances are to be determined by a drawing or by some other method based on an element of chance; and
 - C. The holders of the winning chances are to receive something of value.
7. "Mutuel" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.
8. "Player" means a person who engages in social gambling solely as a contestant or bettor on equal terms with the other participants therein without receiving or becoming entitled to receive something of value or any profit therefrom other than his personal gambling winnings. "Social gambling" is gambling, or a contest of chance, in which the only participants are players and from which no person or organization receives or becomes entitled to receive something of value or any profit whatsoever, directly or indirectly, other than as a player, from any source, fee, remuneration connected with said gambling, or such activity as arrangements or facilitation of the game, or permitting the use of premises, or selling or supplying for profit refreshments, food, drink service or entertainment to participants, players or spectators. A person who engages in "bookmaking" as defined in subsection 2 is not a "player."
9. **"Profit from gambling activity."** A person "profits from gambling activity" if, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity.
10. "Something of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property, or of any interest therein.
11. "Unlawful" means not expressly authorized by statute. An activity not expressly authorized by statute does not cease to be unlawful solely because it is authorized under federal law or the laws of another state or jurisdiction.

§954. Unlawful gambling

1. Any person is guilty of unlawful gambling if that person intentionally or knowingly advances or profits from unlawful gambling activity.

- 1-A. A person is guilty of unlawful gambling if the person is under 21 years of age and plays a slot machine as defined in Title 8, section 1001, subsection 39.
2. Unlawful gambling is a Class D crime.
3. A person convicted of a violation under this section must forfeit to the Nation all income associated with that violation.

§955. Possession of gambling records

1. A person is guilty of possession of gambling records if, other than as a player, he knowingly possesses any writing, paper, instrument or article, which is being used or is intended by him to be used in the operation of unlawful gambling activity, as defined in this chapter.
2. Possession of gambling records is a Class D crime.

§956. Possession of gambling devices

1. A person is guilty of possession of gambling devices if he manufactures, sells, transports, places, possesses or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of any gambling device, knowing it is to be used in the advancement of unlawful gambling activity, as defined in this chapter.
2. Possession of gambling devices is a Class D crime.

§957. Out-of-state gambling

In any prosecution under this chapter it is not a defense that the gambling activity, including the drawing of a lottery, which is involved in the illegal conduct takes place outside this State and is not in violation of the laws of the jurisdiction in which the lottery or other activity takes place.

§958. Injunctions; recovery of payments

1. When it appears to the Attorney General that any person has formed or published a lottery, or taken any measures for that purpose, or is engaged in selling or otherwise distributing tickets, certificates, shares or interests therein, whether such lottery originated in this State or not, he shall immediately make complaint in the name of the State to the Superior Court for an injunction to restrain such person from further proceedings therein. If satisfied that there is sufficient ground therefor, such court shall forthwith issue such injunction and thereupon it shall order notice to be served on the adverse party to appear and answer to said complaint. Such court, after a full hearing, may dissolve, modify or make perpetual such injunction, make all orders and decrees necessary to restrain and suppress such unlawful proceedings and, if the adverse party neglects to appear, or the final decree of the court is against him, judgment shall be rendered against him for all costs, fees and expenses incurred in the case and for such compensation to the Attorney General for his expenses, as the court deems reasonable.
2. Payments, compensations and securities of every description, made directly or indirectly in whole or in part, for any such lottery or ticket, certificate, share or interest therein, are received without consideration and against law and equity, and may be recovered.

§959. Illegal gambling machines; forfeiture

1. An illegal gambling machine, including any monetary contents and any associated proceeds, is subject to forfeiture to the State.
2. An illegal gambling machine, any monetary contents and any associated proceeds may be declared forfeited under this section by any court that has jurisdiction over the illegal gambling machine or final jurisdiction over any related criminal proceeding brought under this chapter or by the Superior Court for Kennebec County. Property subject to forfeiture may be kept or stored at any location within the territorial boundaries of the State and is subject to the authority of any court in which a petition seeking the forfeiture of that property is filed.
3. Forfeitures under this section must be accomplished by the following procedure.

- A. A district attorney or the Attorney General may petition the Superior Court in the name of the State in the nature of a proceeding in rem to order forfeiture of an illegal gambling machine, any monetary contents and any associated proceeds. The petition must be filed in the court having jurisdiction over the property.
 - B. The proceeding under paragraph A is an in rem civil action, in which the State has the burden of proving all material facts by a preponderance of the evidence.
 - C. A court shall order the State to give notice of the pendency of the action and the right to be heard by certified or registered mail or through hand delivery by a deputy sheriff to any person who appears to have an interest in the illegal gambling machine, any monetary contents and any associated proceeds. Receipt by a person then licensed to operate a motor vehicle in the State is presumed when notice is mailed to the last known address of that person on file with the Department of the Secretary of State, Bureau of Motor Vehicles.
 - D. A court shall hold a hearing on the petition after an answer is filed by a person served with notice under paragraph C. At the hearing, the court shall hear evidence and make findings of fact and enter conclusions of law.
 - E. Based on the findings and conclusions, the court shall issue a final order, from which the parties have a right of appeal. The final order must provide for disposition of the illegal gambling machine, any monetary contents and any associated proceeds by the State. Any revenue generated by the disposition of the illegal gambling machine, any monetary contents of the machine and any associated proceeds must be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice. The balance, if any, must be deposited in the General Fund.
4. Any law enforcement officer, department or agency having custody of an illegal gambling machine, any monetary contents of an illegal gambling machine or any associated proceeds or having disposed of the illegal gambling machine, any monetary contents or any associated proceeds shall keep and maintain during the pendency of the action full and complete records in accordance with this subsection. Upon issuance by the court of a final order ordering the disposition, destruction or return of the illegal gambling machine, any monetary contents or any associated proceeds, the officer, department or agency must transmit a copy of those records to the Department of Public Safety for inclusion into a centralized record.
- A. The records must show:
 - (1) From whom the illegal gambling machine, any monetary contents and any associated proceeds were received;
 - (2) Under what authority the illegal gambling machine, any monetary contents and any associated proceeds are held, received or disposed of;
 - (3) To whom the illegal gambling machine, any monetary contents and any associated proceeds are delivered;
 - (4) The date and manner of destruction or disposition of the illegal gambling machine; and
 - (5) The exact kinds, quantities and forms of illegal gambling machines, the exact amount of any monetary contents of any machine and the exact amount of any associated proceeds held in custody or disposed of.
 - B. The records must be open to inspections by all federal and state officers authorized by the laws of the United States, a state or territory of the United States or a foreign nation to investigate or prosecute gambling laws.
 - C. The Department of Public Safety is responsible for maintaining a centralized record of illegal gambling machines seized. At least quarterly, the department shall provide a report of the disposition of property previously held by the department to the Commissioner of Administrative and Financial Services and the legislative Office of Fiscal and Program Review for review. These records must include an estimate of the fair market value of items seized.

5. Persons making final disposition or destruction of an illegal gambling machine, its monetary contents or any associated proceeds under court order shall report, under oath, to the court the exact circumstances of the destruction or disposition.
6. An illegal gambling machine together with any monetary contents and any associated proceeds is contraband and may be seized by any law enforcement officer pursuant to subsection 7 or 8.
7. At the request of the Nation ex parte, a court may issue any preliminary order or process necessary to seize or secure the property for which forfeiture is sought and provide for its custody.
 - A. Process for seizure of the property for which forfeiture is sought under this section may issue only upon a showing of probable cause. The application for process for seizure of the property and the issuance, execution and return of the process are subject to the provisions of applicable state law.
 - B. Any property subject to forfeiture under this section may be seized upon process.
8. Seizure of property forfeited under this section without process may be made when seizure is incident to a legal search or inspection if a law enforcement officer has probable cause to believe the property seized is an illegal gambling machine.

§960. Criminal forfeiture

1. A person convicted of a violation of this chapter forfeits to the Nation all rights, privileges, interests and claims to property that is subject to forfeiture pursuant to section 959. All rights, privileges, interest and title in property subject to forfeiture under this section vest in the Nation upon the commission of the act giving rise to forfeiture pursuant to section 959.
2. Property subject to forfeiture that is not yet the subject of a final order pursuant to section 959 may be proceeded against by indictment or superseding indictment of a grand jury in any related criminal proceeding in which one or more persons with an interest in the property have been simultaneously indicted for one or more violations of this chapter. At any time prior to trial, the Nation, with the consent of the court and any defendant with an interest in the property, may file an ancillary charging instrument or information alleging that that property is subject to criminal forfeiture. Upon commencement of a criminal forfeiture by indictment or information of any property that may be the subject of any pending civil action commenced pursuant to section 959, the civil action must be immediately stayed and subrogated to the criminal forfeiture action. Discovery in the criminal action must be as provided by the Maine Rules of Unified Criminal Procedure.
3. Property subject to forfeiture that has not already been seized but has been indicted by a grand jury pursuant to this section may also be ordered seized based upon the grand jury's finding of probable cause pursuant to section 959.
4. Trial against property charged by indictment or information may be by jury and must be held in a single proceeding together with the trial of the related criminal violation. Forfeiture of the property must be proved by the Nation by a preponderance of the evidence. The court, in its discretion, may allow any defendant with an interest in property indicted pursuant to this section to waive the right to trial by jury as against the property while preserving the right to trial by jury of any crime alleged. At trial by jury, the court, upon motion of a defendant or the Nation, may separate the trial of the matter against the defendant from the trial of the matter against the property subject to criminal forfeiture. If the court bifurcates the jury trial, the court shall first instruct and submit to the jury the issue of the guilt or innocence of defendants to be determined by proof beyond a reasonable doubt and shall restrict argument of counsel to those issues. After a verdict upon the guilt or innocence of all defendants, the court shall instruct and submit to the jury the issue of the forfeiture of the property to be determined by proof by a preponderance of the evidence and the court shall restrict argument to those issues. A special verdict must be returned as to the extent of the interest in property subject to forfeiture, if any.

5. A person not charged in an indictment under this section may not intervene in the criminal action. Following the entry of a verdict of forfeiture of property pursuant to this section or the entry of a guilty plea in open court on the record, the Nation shall provide written notice of its intent to dispose of the property to any person known to have alleged an interest in the property. The notice may be by certified, return receipt mail or as otherwise ordered by the court. Receipt by a person then licensed to operate a motor vehicle in the Nation is presumed when notice is mailed to the last known address of that person on file with the Department of the Secretary of State, Bureau of Motor Vehicles. A person other than the defendant asserting a legal interest in the property within 30 days of the date of receipt of the notice may petition the court for a hearing to adjudicate the validity of any alleged interest in the property. The hearing must be held before the court without jury. The request for the hearing must be signed by the petitioner under penalty of perjury and must state the nature and extent of the petitioner's right, title or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title or interest in the property, any additional facts supporting the petitioner's claim and the relief sought. The court shall issue or amend a final order of forfeiture in accordance with its determination if, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that:
 - A. The petitioner has a legal right, title or interest in the property and the right, title or interest renders the order of forfeiture invalid in whole or in part because the right, title or interest was vested in the petitioner rather than any defendant or was superior to any right, title or interest to the exclusion of any defendant at the time of the commission of the acts that gave rise to the forfeiture of the property under this section; and
 - B. The petitioner is a bona fide purchaser for value of the right, title or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section.
6. Following the entry of a verdict of forfeiture of property pursuant to this section or the entry of a guilty plea in open court on the record, the Nation has clear title to property that is the subject of the indictment or information and order of forfeiture and may order all or a portion of the property forfeited to the Nation to be disposed of pursuant to section 959.

§961. Construction

Sections 959 and 960 must be liberally construed to effectuate their remedial purposes.

CHAPTER 41

CRIMINAL USE OF EXPLOSIVES AND RELATED CRIMES

§1001. Criminal use of explosives

1. A person is guilty of criminal use of explosives if he intentionally or knowingly:
 - A. Without right, throws or places explosives into, against or upon any real or personal property;
 - B. Makes, imports, transports, sends, stores, sells or offers to sell any explosives without a proper permit under the regulations, or in violation of the regulations;
 - C. Sells or supplies explosives to, or buys, procures or receives explosives for, a person prohibited by the regulations from receiving explosives; or
 - D. Possesses explosives with the intent to do any of the acts prohibited in this section.
2. As used in this section:
 - A. "Explosives" means gunpowders, powders used for blasting all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powders and any chemical compounds, mechanical mixtures or other ingredients in such proportions, quantities or packing that ignition by fire, by friction, by chemical reaction, by concussion, by percussion, by detonation or deflagration of the compound or material or any part thereof may cause an explosion; and
 - B. "Regulations" means the rules, regulations, ordinances and bylaws issued by lawful authority pursuant to Title 25, section 2472.
3. Criminal use of explosives is a Class C crime.

§1002. Criminal use of disabling chemicals

1. A person is guilty of criminal use of disabling chemicals if he intentionally sprays or otherwise uses upon any other person chemical mace or any similar substance composed of a mixture of gas and chemicals which has or is designed to have a disabling effect upon human beings.
2. Criminal use of disabling chemicals is a Class D crime.
3. This section shall not apply to the use of those disabling chemicals when that use is for the purpose of:
 - A. Defending a person under section 108;
 - B. Defending premises under section 104; or
 - C. Retaking property, preventing that taking or preventing criminal mischief under section 105; as authorized for the use of nondeadly force.

§1002-A. Criminal use of laser pointers

1. A person is guilty of criminal use of a laser pointer if the person intentionally, knowingly or recklessly points a laser pointer at another person, while the laser pointer is emitting a laser beam, and:
 - A. Causes bodily injury to that other person. Violation of this paragraph is a Class D crime;
 - B. That other person is a law enforcement officer in uniform. Violation of this paragraph is a Class D crime; or
 - C. Causes a reasonable person to suffer intimidation, annoyance or alarm. Violation of this paragraph is a Class E crime
2. For the purposes of this section, "laser pointer" means a hand-held device that emits a visible light beam amplified by the stimulated emission of radiation.
3. It is a defense to a prosecution under this section that at the time of the laser pointer's use the person who intentionally, knowingly or recklessly pointed a laser pointer at another person was justified under chapter 5 in threatening or using physical force upon the other person.
4. As part of every judgment of conviction and sentence imposed, every laser pointer that constitutes the basis for conviction under this section must be forfeited to the Nation and the court shall so

order, unless another person can satisfy the court prior to the judgment and by a preponderance of the evidence that such other person had a right to possess the laser pointer, to the exclusion of the defendant, at the time of the offense.

§1003. Criminal use of noxious substance

1. A person is guilty of criminal use of noxious substance if he intentionally deposits on the premises or in the vehicle or vessel of another, without his consent, any stink bomb or other device or substance which releases or is designed to release noxious offensive odors.
2. Criminal use of noxious substance is a Class E crime.

§1004. Criminal use of electronic weapon

1. Except as provided in subsection 4, a person is guilty of criminal use of an electronic weapon if the person intentionally, knowingly or recklessly uses an electronic weapon upon any other person.
2. As used in this section, "electronic weapon" means a portable device or weapon from which an electrical current, impulse, wave or beam may be directed, which current, impulse, wave or beam is designed to have a disabling effect upon human beings.
3. Criminal use of an electronic weapon is a Class D crime.
4. This section does not apply to the use of an electronic weapon by:
 - A. A law enforcement officer, corrections officer or corrections supervisor engaged in the performance of the law enforcement officer's, corrections officer's or corrections supervisor's public duty if the officer's or corrections supervisor's appointing authority has authorized such use of an electronic weapon;
 - B. A person using an electronic weapon when that use is for the purpose of:
 - (1) Defending that person or a 3rd person as authorized under section 108, subsection 2; or
 - (2) Defending that person's dwelling place as authorized under section 104, subsections 3 and 4.

CHAPTER 43

WEAPONS

§1051. Possession of machine gun

1. A person is guilty of possession of a machine gun if, without authority to do so, he knowingly possesses a machine gun.
2. As used in this chapter, "machine gun" means a weapon of any description, by whatever name known, loaded or unloaded, which is capable of discharging a number of projectiles in rapid succession by one manual or mechanical action on the trigger or firing mechanism.
3. Possession of a machine gun is a Class D crime.

§1052. Right to possess, carry or transport machine gun

Any law enforcement officer of the State of Maine, any law enforcement officer of another state or a territory of the United States, members of the Armed Forces, Maine National Guard and Maine State Guard may possess a machine gun if the possession or carrying of such weapon is in the discharge of his official duties and has been authorized by his appointing authority.

Machine guns manufactured, acquired, transferred or possessed in accordance with the National Firearms Act, as amended, shall be exempt from this chapter

§1053. Confiscation and seizure of machine gun

Any machine gun possessed in violation of section 1051 is declared to be contraband and is subject to forfeiture to the State. Any law enforcement officer shall have the power to seize the same with due process.

When a machine gun is seized as provided, the officer seizing the same shall immediately file with the judge before whom such warrant is returnable, a libel against the machine gun, setting forth the seizure and describing the machine gun and the place of seizure in a sufficient manner to reasonably identify it, that it was possessed in violation of law and pray for a decree of forfeiture thereof. Such judge shall fix a time for the hearing of such libel and shall issue his monition and notice of same to all persons interested, citing them to appear at the time and place appointed to show cause why such machine gun should not be declared forfeited, by causing true and attested copies of said libel and monition to be posted in 2 public and conspicuous places in the town and place where such machine gun was seized, 10 days at least before said libel is returnable. In addition, a true and attested copy of the libel and monition shall be served upon the person from whom said machine gun was seized and upon the owner thereof, if their whereabouts can be readily ascertained 10 days at least before said libel is returnable. In lieu of forfeiture proceedings, title to such seized machine gun may be transferred in writing to the State of Maine by the owner thereof. If title to and ownership in the machine gun is transferred to the State, a receipt for the machine gun shall be given to the former owner by the law enforcement officer who seized the machine gun

§1054. Forfeiture of machine gun

If no claimant for a machine gun seized under the authority of section 1053 appears, the judge shall, on proof of notice, declare the same to be forfeited to the State. If any person appears and claims such machine gun, as having a right to the possession thereof at the time when the same was seized, he shall file with the judge a claim in writing stating specifically the right so claimed, the foundation thereof, the item so claimed, any exemption claimed, the time and place of the seizure and the name of the law enforcement officer who seized the machine gun, and in it declare that it was not possessed in violation of this chapter, and state his business and place of residence and sign and make oath to the same before said judge. If any person so makes claim, he shall be admitted as a party to the process, and the libel, and may hear any pertinent evidence offered by the libelant or claimant. If the judge is, upon hearing, satisfied that said machine gun was not possessed in violation of this chapter, and that claimant is entitled to the custody thereof, he shall give an order in writing, directed to the law enforcement officer having seized the same, commanding him to deliver to the claimant the machine gun to which he is so found to be entitled, within 48 hours after demand. If the judge finds the claimant not entitled to possess the machine gun, he shall render judgment against him for the libelant for costs, to be taxed as in civil cases before such judge, and issue execution thereon, and shall declare such machine gun forfeited to the State. The claimants may appear and shall recognize with sureties as on appeals in civil actions from a judge. The judge may order that the machine gun remain in the custody of the seizing law enforcement officer, pending the disposition of the appeal. All machine guns declared forfeited to the State, or title to which have been transferred to the State in lieu of forfeiture proceedings shall be turned over to the Chief of the Maine State Police. If said machine gun is found to be of a historic, artistic, scientific or educational value, the State Police may retain the machine gun for an indefinite period of time. Any other machine gun declared forfeited and in possession of the State Police shall be destroyed by a means most convenient to the Chief of the State Police.

§1056. Possession of armor-piercing ammunition

1. A person is guilty of possession of armor-piercing ammunition if, without authority to do so, the person knowingly possesses armor-piercing ammunition other than as part of a bona fide collection.
2. As used in this chapter, "armor-piercing ammunition" means a projectile or projectile core that may be used in a handgun and that is constructed entirely, excluding the presence of traces of other substances, from one or a combination of tungsten alloys, steel, iron, brass, beryllium copper or depleted uranium, including but not limited to ammunition commonly known as KTW ammunition. "Armor-piercing ammunition" does not include shotgun shot required by federal or state

environmental or game laws, rules or regulations for hunting purposes, a frangible projectile designed for target shooting or any projectile or projectile core found by the United States Secretary of the Treasury or the secretary's delegate, pursuant to 27 Code of Federal Regulations, Section 178.148 or Section 178.149, to be:

- A. Primarily intended to be used for sporting purposes; or
 - B. Used for industrial purposes, including a charge used in an oil and gas well perforating device
3. Possession of armor-piercing ammunition is a Class C crime.
 4. This section does not apply to members of the United States Armed Forces, the United States Reserve Forces or the National Guard, or to law enforcement officers or agencies or forensic laboratories, in the course of duty or employment.

§1057. Possession of firearms in an establishment licensed for on-premises consumption of liquor

1. A person is guilty of criminal possession of a firearm if:
 - A. Not being a law enforcement officer or a professional investigator licensed under Title 32, chapter 89 and actually performing as a professional investigator, the person possesses any firearm on the premises of a licensed establishment posted to prohibit or restrict the possession of firearms in a manner reasonably likely to come to the attention of patrons, in violation of the posted prohibition or restriction;
 - B. While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs or with an excessive alcohol level, the person possesses a firearm in a licensed establishment.
 2. For the purposes of this section, "licensed establishment" means a licensed establishment as defined by Title 28-A, section 2, subsection 15, the license for which is held by an on-premise retail licensee, as defined by Title 28-A, section 2, subsection 27, paragraph B. For the purposes of this section, "premises" has the same meaning as set forth in Title 28-A, section 2, subsection 24.
 3. It is not a defense to a prosecution under subsection 1 that the person holds a permit to carry a concealed handgun issued under Title 25, chapter 252.
 4. A law enforcement officer who has probable cause to believe that a person has violated subsection 1, paragraph B, may require that person to submit to chemical testing to determine an alcohol level or drug concentration. If the court is satisfied that the law enforcement officer had probable cause to believe that the defendant was in violation of subsection 1, paragraph B, and that the person was informed of the requirement to submit to chemical testing, the person's failure to comply with the requirement to submit to chemical testing is admissible evidence on the issue of whether that person was under the influence of intoxicating liquor or drugs.
 5. For purposes of this section, "under the influence of intoxicating liquor or drugs or a combination of liquor and drugs or with an excessive alcohol level" has the same meaning as "under the influence of intoxicants" as defined in Title 29-A, section 2401, subsection 13. "Excessive alcohol level" means an alcohol level of 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath. Standards, tests and procedures applicable in determining whether a person is under the influence or has an excessive alcohol level within the meaning of this section are those applicable pursuant to Title 29-A, sections 2411 and 2431; except that the suspension of a permit to carry concealed handguns issued pursuant to Title 25, chapter 252, or of the authority of a professional investigator licensed to carry a concealed handgun pursuant to Title 32, chapter 89, is as provided in those chapters.
 6. Criminal possession of a firearm is a Class D crime. In addition, as part of every judgment of conviction and sentence imposed, the court shall:
 - A. Revoke any permit to carry a concealed firearm issued to the person so convicted; and
 - B. If the person so convicted is licensed as a professional investigator, suspend for a period of 5 years that person's permit to carry a concealed firearm.
- A person convicted of a violation of this section is not eligible to obtain or apply for a permit to carry a concealed firearm for 5 years from the date of that conviction.

§1058. Unauthorized possession of firearm in courthouse

1. A person is guilty of unauthorized possession of a firearm in a courthouse if that person in fact possesses a firearm in a courthouse.
2. This section does not apply to:
 - A. A law enforcement officer, a corrections officer or a corrections supervisor engaged in the performance of the law enforcement officer's, corrections officer's or corrections supervisor's public duty;
 - B. A person possessing an unloaded firearm for the purpose of offering the firearm as evidence in a civil or criminal proceeding if the presiding judge or justice has granted prior approval in writing to the person and the person possesses a copy of the written approval; or
 - C. An employee of a courier or security service in the course and scope of employment for the courier or security service, as approved by the judicial marshal.
- 2-A. It is not a defense to a prosecution under this section that the person holds a valid permit to carry a concealed handgun issued under Title 25, chapter 252.
1. Unauthorized possession of a firearm in a courthouse is a Class D crime.

Official Note for Section 1058

1. Section 1058 is adopted by the Penobscot Nation Chief and Council to include, not only courtrooms, but all tribal court offices and facilities.

§1059. Unauthorized possession of a firearm in a correctional facility or jail

1. A person is guilty of unauthorized possession of a firearm in a correctional facility or jail if that person in fact possesses a firearm in a correctional facility or jail or on the premises of the correctional facility or jail.
2. This section does not apply to:
 - A. A law enforcement officer, a corrections officer or a corrections supervisor engaged in the performance of the law enforcement officer's, corrections officer's or corrections supervisor's public duty;
 - B. An employee of a courier or security service in the course and scope of employment for the courier or security service, as approved by the chief administrative officer of the correctional facility or the jail administrator; or
 - C. A person who has stored a firearm out of sight in a locked motor vehicle that is on the premises of a correctional facility or jail
3. It is not a defense to a prosecution under this section that the person holds a valid permit to carry a concealed handgun issued under Title 25, chapter 252.
4. Unauthorized possession of a firearm in a correctional facility or jail is a Class D crime.
5. For the purposes of this section, "chief administrative officer" and "correctional facility" have the same meanings as in Title 34-A, section 1001, subsections 1 and 6, respectively, and "jail" means a county or regional jail.

Official Note for Section 1059

1. Section 1059 is adopted by the Penobscot Nation Chief and Council to include, not only correctional facilities and jails, but all tribal court offices and facilities.

CHAPTER 45

DRUGS

§1101. Definitions

As used in this Title, the following words shall, unless the context clearly requires otherwise, have the following meanings.

1. "Marijuana" includes the leaves, stems, flowers and seeds of all species of the plant genus *Cannabis*, whether growing or not; but does not include the resin extracted from any part of such plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin including hashish and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, fiber, oil or cake or the sterilized seed of such plant that is incapable of germination. "Marijuana" does not include hemp as defined in Title 7, section 2231, subsection 1-A, paragraph D.
2. "Hypodermic apparatus," hypodermic syringe, hypodermic needle or any instrument designed or adapted for the administration of any drug by injection.
3. "Isomer," the optical isomer, except wherever appropriate, the optical, position or geometric isomer.
4. "Manufacture," to produce, prepare, propagate, compound, convert or process, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis.
- 4-A. "Methamphetamine precursor drug" means any drug or product possessed by a person that contains in the aggregate a quantity of more than 9 grams of ephedrine, pseudoephedrine or phenylpropanolamine or their salts, isomers or salts of isomers, either alone or in combination with other ingredients, in dry or solid nonliquid form.
5. "Hashish" includes the resin extracted from any part of the cannabis plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin. "Hashish" does not include the resin extracted from hemp as defined in Title 7, section 2231, subsection 1-A, paragraph D.
6. "Narcotic drug," any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
 - A. Opium and any opiate, and any salt, compound, derivative or preparation of opium or opiate;
 - B. Any salt, compound, isomer, ester, ether, derivative or preparation thereof which is chemically equivalent or identical to or with any of the substances referred to in paragraph A, but not including the isoquinoline alkaloids of opium; or
 - C. Opium poppy and poppy straw
7. "Opiate."
 - A. Any substance having an analgesic and addiction forming or addiction sustaining property or liability similar to morphine or capable of conversion into a drug having such analgesic and addiction forming or addiction sustaining property or liability.
 - B. This term does not include, unless specifically designated or listed in Schedule W, X, Y or Z, the dextrorotatory isomer or 3-methoxy-n-methyl-morphinan and its salts, dextromethorphan, but does include its racemic and levorotatory forms.
8. "Opium poppy," the plant of the species *Papaver somniferum* L., except its seeds.
9. "Poppy straw," all parts, except the seeds, of the opium poppy, after mowing.
10. "Prescription drug" means a drug which:
 - A. Under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

- (1) "Caution: Federal law prohibits dispensing without prescription."; or
 - (2) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian.";
- B. Is required by an applicable federal or state law or rule to be dispensed on prescription only or is restricted to use by practitioners only.
- 11. "Scheduled drug," any drug named or described in section 1102, schedule W, X, Y or Z.
- 12. "Schedule W drug," any drug named, listed or described in section 1102, schedule W.
- 13. "Schedule X drug," any drug named, listed or described in section 1102, schedule X.
- 14. "Schedule Y drug," any drug named, listed or described in section 1102, schedule Y.
- 15. "Schedule Z drug," any drug named, listed or described in section 1102, schedule Z.
- 16. "State laboratory," a laboratory of any state agency which is capable of performing any or all of the analyses that may be required to establish that a substance is a scheduled or a counterfeit drug, including, but not limited to, the laboratory of the State Department of Health and Human Services and any such laboratory that may be established within the Department of Public Safety.

Official Note for Section 1101

- 1. Section 1101 of this section: "Department of Health and Human Services" adopted by the Penobscot Nation Chief and Council to include Penobscot Indian Nation Department of Social Services.
- 17. "Traffick":
 - A. To make, create, manufacture;
 - B. To grow or cultivate, except for marijuana;
 - C. To sell, barter, trade, exchange or otherwise furnish for consideration; or
 - D. To possess with the intent to do any act mentioned in paragraph C.
- 18. "Furnish":
 - A. To furnish, give, dispense, administer, prescribe, deliver or otherwise transfer to another; or
 - B. To possess with the intent to do any act mentioned in paragraph A.
- 19. "Imitation scheduled drug," a substance that is not a scheduled drug and which was not obtained by valid medical prescription, but which, by dosage unit appearance or by representations made, would lead a reasonable person to believe that the substance was a scheduled drug.
- 20. "Dosage unit," that unit of measurement which is equivalent to an average adult dose.
- 21. "Cultivate" means to sow a seed; to grow, raise or tend a plant; to harvest a plant; or to knowingly possess a plant.
- 22-A. "Hemp" has the same meaning as in Title 7, section 2231, subsection 1-A, paragraph D.
- 23. "Safe zone" means an athletic field, park, playground or recreational facility that is designated as a safe zone by a municipality pursuant to Title 30-A, section 3253.
- 24. "Fentanyl powder" means any compound, mixture or preparation, in granular or powder form, containing fentanyl or any derivative of fentanyl listed in section 1102, subsection 1, paragraph I in any quantity.
- 25. **Cocaine.** "Cocaine" means:
 - A. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine and derivatives of ecgonine and their salts have been removed; or
 - B. A mixture or preparation that contains any quantity of any of the following substances:
 - (1) Cocaine, its salts, optical and geometric isomers and salts of isomers;
 - (2) Ecgonine, its derivatives, their salts, isomers and salts of isomers; or
 - (3) Cocaine base, which is the alkaloid form of cocaine.

26. **Heroin.** "Heroin" means any compound, mixture or preparation containing heroin (diacetylmorphine) in any quantity.

§1102. Schedules W, X, Y and Z

For the purposes of defining crimes under this chapter and of determining the penalties therefor, there are hereby established the following schedules, designated W, X, Y and Z.

1. Schedule W:

- A. Unless listed or described in another schedule, any amphetamine, or its salts, isomers, or salts of isomers, including but not limited to methamphetamine, or its salts, isomers, or salts of isomers;
- B. Unless listed or described in another schedule, or unless made a nonprescription drug by federal law, barbituric acid or any derivative of barbituric acid, or any salt of barbituric acid or of a derivative of barbituric acid, including but not limited to amobarbital, butabarbital, pentobarbital, secobarbital, thiopental, and methohexital;
- F. Cocaine;
- G. Phenmetrazine and its salts;
- H. Methylphenidate or its salts;
- I. Unless listed or described in another schedule, any compound, mixture or preparation containing narcotic drugs in any quantity, including, but not limited to, the following narcotic drugs or their salts, isomers or salts of isomers: heroin (diacetylmorphine); methadone; methadone hydrochloride; levo-alpha-acetyl-methadol, or LAAM; pethidine; opium; morphine; oxycodone; hydrocodone; hydromorphone; buprenorphine; U-47700; W-18; W-15; AH-7921; carfentanil; sufentanil; fentanyl powder; and any derivative of fentanyl powder by any substitution on or replacement of the phenethyl group, any substitution on the piperidine ring, any substitution on or replacement of the propanamide group, any substitution on the phenyl group or any combination thereof, including, but not limited to, despropionyl fentanyl, furanylfentanyl, fluorofentanyl, 4-fluoroisobutyryl fentanyl, acetylfentanyl and any methyلفentanyl derivatives;
- J. Phencyclidine;
- K. Lysergic acid diethylamide, and its salts, isomers and salts of isomers;
- L. Lysergic acid;
- M. Lysergic acid amide;
- N. Flunitrazepam or its chemical equivalent;
- O. Unless listed or described in another schedule, the following hallucinogenic drugs or their salts, isomers and salts of isomers whenever the existence of the salts, isomers and salts of isomers is possible within the chemical designation:
 - (1) 3, 4 - methylenedioxy amphetamine, MDA;
 - (2) 5 methoxy - 3, 4 methylenedioxy amphetamine, MMDA;
 - (3) 3, 4, 5 - trimethoxy amphetamine, TMA;
 - (4) 4 - methyl - 2, 5 - dimethoxyamphetamine, DOM;
 - (5) 2, - 3 methylenedioxyamphetamine;
 - (6) 2, 5 - dimethoxyamphetamine, DMA;
 - (7) 4 - bromo - 2, 5 - dimethoxyamphetamine, DOB;
 - (8) 4 methoxyamphetamine;
 - (9) 3, 4 - methylenedioxymethamphetamine, MDMA;
 - (10) 4 - bromo - 2, 5 - dimethoxyphenethylamine, NEXUS;
 - (11) 3, 4 - methylenedioxy-N-ethylamphetamine, MDE;
 - (12) Paramethoxymethamphetamine, PMMA;
 - (13) Paramethoxyamphetamine, PMA; and
 - (14) Paramethoxyethylamphetamine, PME; and

P. Unless listed or described in another schedule, the following synthetic hallucinogenic drugs:

- (1) 3, 4 - methylenedioxymethcathinone, MDMC;
- (2) 3, 4 - methylenedioxypropylvalerone, MDPV;
- (3) 4 - methylmethcathinone, 4-MMC;
- (4) 4 - methoxymethcathinone, bk-PMMA, PMMC;
- (5) 3 - fluoromethcathinone, FMC;
- (6) 4 - fluoromethcathinone, FMC;
- (7) Naphthylpropylvalerone, NRG-1;
- (8) Beta-keto-N-methylbenzodioxolylpropylamine;
- (9) 4 - methylethcathinone, 4-MEC;
- (10) Butylone;
- (11) Eutylone;
- (12) Pentedrone;
- (13) Pentylone;
- (14) 2, 5 - dimethoxy-4-ethylphenethylamine; or
- (15) A derivative of cathinone, including any compound, material, mixture, preparation or other product, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl or thiophene ring systems, whether or not the compound is further modified in any of the following ways:
 - (a) By substitution in the ring system to any extent with alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;
 - (b) By substitution at the 3-position with an acyclic alkyl substituent; or
 - (c) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups or by inclusion of the 2-amino nitrogen atom in a cyclic structure.

This subparagraph does not include a drug listed in section 1102 or a drug approved by the United States Food and Drug Administration

2. Schedule X:

- A. Unless listed or described in another schedule, any of the following drugs having depressant effect on the central nervous system
 - (1) Chlorhexadol
 - (2) Sulfondiethylmethane
 - (3) Sulfonethylmethane
 - (4) Sulfonmethane
- B. Nalorphine;
- C. Unless listed in another schedule, any of the following hallucinogenic drugs, or their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation
 - (1) Bufotenine
 - (2) Ibogaine
 - (3) Mescaline, including but not limited to peyote
 - (4) N-methyl-3-piperidyl benzilate
 - (5) N-ethyl-3-piperidyl benzilate
 - (6) Psilocybin
 - (7) Psilocyn
 - (8) Hashish;
- E. Methaqualone or its salts
- F. Methprylon;
- G. Glutethimide.

- H. Unless listed or described in another schedule, the following hallucinogenic drugs or their salts, isomers and salts of isomers whenever the existence of the salts, isomers and salts of isomers is possible within the specific chemical designation:
 - (5) Diethyltryptamine, DET;
 - (6) Dimethyltryptamine, DMT;
 - (7) Dipropyltryptamine, DPT; and
 - (12) Alpha-ethyltryptamine, AET.
 - K. Diethylpropion or its salts;
 - L. Gamma hydroxybutyrate, GHB, and its salts, isomers and salts of isomers;
 - M. Ketamine and its salts, isomers and salts of isomers; and
 - N. The following substances, if intended for human ingestion:
 - (1) Gamma butyrolactone, GBL, and its salts, isomers and salts of isomers; or
 - (2) One, 4-butanediol, BD, and its salts, isomers and salts of isomers.
3. Schedule Y:
- A. Barbitol or its salts;
 - B. Chloral betaine;
 - C. Ethchlorvynol;
 - D. Ethinamate;
 - E. Methohexital or its salts;
 - F. Methylphenobarbital or its salts;
 - G. Paraldehyde;
 - H. Petrichloral;
 - I. Phenobarbital or its salts;
 - J. Codeine (methyilmorphine) or its salts;
 - K. Any compound, mixture or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredient in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone
 - (1) not more than 2.5 milligrams of diphenoxylate with not less than 25 micrograms of atropin sulfate per dosage unit
 - L. Meprobamate;
 - M. Ergot or any salt, compound or derivative of ergot unless listed in another schedule;
 - N. Flurazepam or its salts;
 - O. Chlordiazepoxide or its salts;
 - P. Diazepam;
 - Q. Carbromal;
 - R. Chloralhydrate;
 - S. Fenfluramine or its salts;
 - U. Phentermine or its salts.
4. Schedule Z:
- A. All prescription drugs other than those included in schedules W, X or Y;
 - B. Marijuana;
 - C. All nonprescription drugs other than those included in schedules W, X or Y as the Maine Board of Pharmacy shall duly designate
 - D. Butyl nitrite or isobutyl nitrite;
 - E. A methamphetamine precursor drug; and
 - G. Synthetic cannabinoids, including:
 - (1) Tetrahydrocannabinols that are naturally contained in a plant of the genus Cannabis or a cannabis plant, excluding tetrahydrocannabinols contained in hemp as defined in Title 7, section 2231, subsection 1-A, paragraph D, as well as synthetic equivalents of the substances contained in the cannabis plant or in the resinous extracts of cannabis or

synthetic substances, derivatives and their isomers with similar chemical structure and pharmacological activity, including the following:

- (a) Delta-1 cis or trans tetrahydrocannabinol and their optical isomers;
 - (b) Delta-6 cis or trans tetrahydrocannabinol and their optical isomers; or
 - (c) Delta-3,4 cis or trans tetrahydrocannabinol and their optical isomers;
- (2) Naphthoylindoles, including any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including the following:
- (a) 1-Pentyl-3-(1-naphthoyl)indole or JWH-018 or AM-678;
 - (b) 1-Butyl-3-(1-naphthoyl)indole or JWH-073;
 - (c) 1-Pentyl-3-(4-methoxy-1-naphthoyl)indole or JWH-081;
 - (d) 1-2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole or JWH-200;
 - (e) 1-Propyl-2-methyl-3-(1-naphthoyl)indole or JWH-015;
 - (f) 1-Hexyl-3-(1-naphthoyl)indole or JWH-019;
 - (g) 1-Pentyl-3-(4-methyl-1-naphthoyl)indole or JWH-122;
 - (h) 1-Pentyl-3-(4-ethyl-1-naphthoyl)indole or JWH-210;
 - (i) 1-Pentyl-3-(4-chloro-1-naphthoyl)indole or JWH-398; or
 - (j) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole or AM-2201;
- (3) Naphthylmethylindoles, including any compound containing a H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including the following:
- (a) 1-Pentyl-1H-indol-3-yl-(1-naphthyl)methane or JWH-175; or
 - (b) 1-Pentyl-1H-3-yl-(4-methyl-1-naphthyl)methane or JWH-184;
- (4) Naphthoylpyrroles, including any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including (5-(2-fluorophenyl)-1-pentylpyrrol-3-yl)-naphthalen-1-ylmethanone or JWH-307;
- (5) Naphthylideneindenes or naphthylmethylindenes, including any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent, including E-1-1-(1-Naphthalenylmethylene)-1H-inden-3-yl]pentane or JWH-176;
- (6) Phenylacetylindoles, including any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent, including the following:
- (a) 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole or RCS-8;
 - (b) 1-Pentyl-3-(2-methoxyphenylacetyl)indole or JWH-250;
 - (c) 1-Pentyl-3-(2-methylphenylacetyl)indole or JWH-251; or
 - (d) 1-Pentyl-3-(2-chlorophenylacetyl)indole, or JWH-203;
- (7) Cyclohexylphenols, including any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl,

alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent, and their isomers with similar chemical structure and pharmacological activity, including the following:

- (a) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol or CP 47,497;
 - (b) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol or Cannabicyclohexanol or CP 47,497-C8 homologue; or
 - (c) 5-(1,1-dimethylheptyl)-2-[(1R,2R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-phenol or CP 55,490;
- (8) Benzoylindoles, including any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent, including the following:
- (a) 1-Pentyl-3-(4-methoxybenzoyl)indole or RCS-4;
 - (b) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole or AM-694; or
 - (c) (4-Methoxyphenyl)-[2-methyl-1-(2-(4-morpholinyl)ethyl)indol-3-yl]methanone or WIN-48,098 or Pravadoline; and
- (9) The following other unclassified synthetic cannabinoids:
- (a) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol or HU-210;
 - (b) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol or Dexanabinol or HU-211;
 - (c) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl-1-naphthalenylmethanone or WIN 55,212-2; or
 - (d) (1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone or XLR-11.

§1103. Unlawful trafficking in scheduled drugs

- 1-A.** Except as provided in subsection 1-B, a person is guilty of unlawful trafficking in a scheduled drug if the person intentionally or knowingly trafficks in what the person knows or believes to be a scheduled drug, which is in fact a scheduled drug, and the drug is:
- B. A schedule X drug. Violation of this paragraph is a Class C crime
 - E. Marijuana in a quantity of more than one pound. Violation of this paragraph is a Class C crime;
 - F. Marijuana and the person grows or cultivates 100 or more plants. Violation of this paragraph is a Class C crime;
 - G. A schedule Y drug. Violation of this paragraph is a Class D crime; or
 - H. A schedule Z drug. Violation of this paragraph is a Class D crime.
- 1-B.** A person is not guilty of unlawful trafficking in a scheduled drug if the conduct that constitutes the trafficking is either:
- A. Expressly authorized by Title 22, Title 28-B or Title 32; or
 - B. Expressly made a civil violation by Title 22 or Title 28-B.
- 3.** Proof that the person intentionally or knowingly possesses any scheduled drug that is in fact of a quantity, state or concentration as provided in this subsection, gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person is unlawfully trafficking in scheduled drugs:
- A. More than one pound of marijuana;
 - B. Fourteen grams or more of cocaine;
 - C-1. Four grams or more of heroin;

- C-2. Four grams or more of fentanyl powder;
 - D. Lysergic acid diethylamide in any of the following quantities, states or concentrations:
 - (1) Any compound, mixture, substance or solution in a liquid state that contains a detectable quantity of lysergic acid diethylamide;
 - (2) Fifty or more squares, stamps, tablets or units of any compound, mixture or substance containing a detectable quantity of lysergic acid diethylamide; or
 - (3) Any quantity of any compound, mixture or substance that, in the aggregate, contains 2,500 micrograms or more of lysergic acid diethylamide;
 - E. Fourteen grams or more of methamphetamine;
 - F. Ninety or more pills, capsules, tablets, vials, ampules, syringes or units containing any narcotic drug other than heroin;
 - G. Any quantity of pills, capsules, tablets, units, compounds, mixtures or substances that, in the aggregate, contains 800 milligrams or more of oxycodone or 100 milligrams or more of hydromorphone; or
 - H. Fourteen grams or more of or 30 or more pills, capsules, tablets or units containing 3, 4 - methylenedioxymethamphetamine, MDMA, or any other drug listed in section 1102, subsection 1, paragraph O or P.
- 6. If a person uses a motor vehicle to facilitate the trafficking of a scheduled drug, the court may, in addition to other authorized penalties, suspend the person's driver's license, permit, privilege to operate a motor vehicle or right to apply for or obtain a license for a period not to exceed 5 years. A suspension may not begin until after any period of incarceration is served. If the court suspends a person's driver's license, permit, privilege to operate a motor vehicle or right to apply for or obtain a license, the court shall notify the Secretary of State of the suspension and the court shall take physical custody of the person's license. The Secretary of State may not reinstate the person's driver's license, permit, privilege to operate a motor vehicle or right to apply for or obtain a license unless the person demonstrates that, after having been released and discharged from any period of incarceration that may have been ordered, the person has served the period of suspension ordered by the court.
 - 7. It is an affirmative defense to prosecution under this section that the substance trafficked in is hemp.

§1104. Trafficking in or furnishing counterfeit drugs

- 1. A person is guilty of trafficking in or furnishing counterfeit drugs if the person intentionally or knowingly trafficks in or furnishes a substance that the person represents to be a scheduled drug but that in fact is not a scheduled drug but is capable of causing death or serious bodily injury when taken or administered in the customary or intended manner.
- 2. Trafficking in or furnishing counterfeit drugs is a Class C crime.
- 3. If a person uses a motor vehicle to facilitate the trafficking or furnishing of a counterfeit drug, the court may, in addition to other authorized penalties, suspend the person's driver's license, permit, privilege to operate a motor vehicle or right to apply for or obtain a license for a period not to exceed 5 years. A suspension may not begin until after any period of incarceration is served. If the court suspends a person's driver's license, permit, privilege to operate a motor vehicle or right to apply for or obtain a license, the court shall notify the Secretary of State of the suspension and the court shall take physical custody of the person's license. The Secretary of State may not reinstate the person's driver's license, permit, privilege to operate a motor vehicle or right to apply for or obtain a license unless the person demonstrates that, after having been released and discharged from any period of incarceration that may have been ordered, the person has served the period of suspension ordered by the court.

§1105-A. Aggravated trafficking of scheduled drugs

1. A person is guilty of aggravated trafficking in a scheduled drug if the person violates section 1103 and:
 - A. The person trafficks in a scheduled drug with a child who is in fact less than 18 years of age and the drug is:
 - (5) A schedule Y drug. Violation of this subparagraph is a Class C crime; or
 - (6) A schedule Z drug. Violation of this subparagraph is a Class C crime;
 - B. At the time of the offense, the person has one or more prior convictions for any Class A, B or C offense under this chapter or for engaging in substantially similar conduct to that of the Class A, B or C offenses under this chapter in another jurisdiction and the drug is:
 - (5) A schedule Y drug. Violation of this subparagraph is a Class C crime; or
 - (6) A schedule Z drug. Violation of this subparagraph is a Class C crime.

Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this paragraph, the date of each prior conviction may precede the commission of the offense being enhanced by more than 10 years;

 - C-1. At the time of the offense, the person possesses a firearm in the furtherance of the offense, uses a firearm, carries a firearm or is armed with a firearm, and the drug is:
 - (5) A schedule Y drug. Violation of this subparagraph is a Class C crime; or
 - (6) A schedule Z drug. Violation of this subparagraph is a Class C crime;
 - E. At the time of the offense, the person is on a school bus or within 1,000 feet of the real property comprising a private or public elementary or secondary school or a safe zone as defined in section 1101, subsection 23 and the drug is:
 - (5) A schedule Y drug. Violation of this subparagraph is a Class C crime; or
 - (6) A schedule Z drug. Violation of this subparagraph is a Class C crime.

For purposes of this paragraph, "school bus" has the same meaning as defined in Title 29-A, section 2301, subsection 5;

 - F. At the time of the offense, the person enlists or solicits the aid of or conspires with a child who is in fact less than 18 years of age to traffick in a scheduled drug and the drug is:
 - (5) A schedule Y drug. Violation of this subparagraph is a Class C crime; or
 - (6) A schedule Z drug. Violation of this subparagraph is a Class C crime;- 2. If a person uses a motor vehicle to facilitate the aggravated trafficking in a scheduled drug, the court may, in addition to other authorized penalties, suspend the person's driver's license or permit or privilege to operate a motor vehicle or right to apply for or obtain a license for a period not to exceed 5 years. A suspension may not begin until after any period of incarceration is served. If the court suspends a person's driver's license or permit, privilege to operate a motor vehicle or right to apply for or obtain a license, the court shall notify the Secretary of State of the suspension and the court shall take physical custody of the person's license or permit. The Secretary of State may not reinstate the person's driver's license or permit or privilege to operate a motor vehicle or right to apply for or obtain a license unless the person demonstrates that, after having been released and discharged from any period of incarceration that may have been ordered, the person has served the period of suspension ordered by the court.
- 3. It is an affirmative defense to prosecution under this section that the substance trafficked in is hemp.

§1105-C. Aggravated furnishing of scheduled drugs

1. A person is guilty of aggravated furnishing of a scheduled drug if the person violates section 1106 and:
 - A. The person furnishes a scheduled drug to a child who is in fact less than 18 years of age and the drug is:
 - (2) A schedule X drug. Violation of this subparagraph is a Class C crime;

- (3) A schedule Y drug. Violation of this subparagraph is a Class C crime; or
 - (4) A schedule Z drug. Violation of this subparagraph is a Class C crime;
 - B. At the time of the offense, the person has one or more prior convictions for any Class A, B or C offense under this chapter or for engaging in substantially similar conduct to that of the Class A, B or C offenses under this chapter in another jurisdiction and the drug is:
 - (2) A schedule X drug. Violation of this subparagraph is a Class C crime;
 - (3) A schedule Y drug. Violation of this subparagraph is a Class C crime; or
 - (4) A schedule Z drug. Violation of this subparagraph is a Class C crime.
- Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this paragraph, the date of each prior conviction may precede the commission of the offense being enhanced by more than 10 years;
- C-1. At the time of the offense, the person possesses a firearm in the furtherance of the offense, uses a firearm, carries a firearm or is armed with a firearm, and the drug is:
 - (2) A schedule X drug. Violation of this subparagraph is a Class C crime;
 - (3) A schedule Y drug. Violation of this subparagraph is a Class C crime; or
 - (4) A schedule Z drug. Violation of this subparagraph is a Class C crime;
 - E. At the time of the offense, the person is on a school bus or within 1,000 feet of the real property comprising a private or public elementary or secondary school or a safe zone as defined in section 1101, subsection 23 and the drug is:
 - (2) A schedule X drug. Violation of this subparagraph is a Class C crime;
 - (3) A schedule Y drug. Violation of this subparagraph is a Class C crime; or
 - (4) A schedule Z drug. Violation of this subparagraph is a Class C crime.
- For purposes of this paragraph, "school bus" has the same meaning as defined in Title 29-A, section 2301, subsection 5;
- F. At the time of the offense, the person enlists or solicits the aid of or conspires with a child who is in fact less than 18 years of age to furnish a scheduled drug and the drug is:
 - (2) A schedule X drug. Violation of this subparagraph is a Class C crime;
 - (3) A schedule Y drug. Violation of this subparagraph is a Class C crime; or
 - (4) A schedule Z drug. Violation of this subparagraph is a Class C crime;

§1105-D. Aggravated cultivating of marijuana

- 1. A person is guilty of aggravated cultivating of marijuana if the person violates section 1117 and:
 - A. At the time of the offense, the person has one or more prior convictions for any Class A, B or C offense under this chapter or for engaging in substantially similar conduct to that of the Class A, B or C offenses under this chapter in another jurisdiction and the person grows or cultivates:
 - (3) More than 5 but fewer than 100 marijuana plants. Violation of this subparagraph is a Class C crime; or
 - (4) Five or fewer marijuana plants. Violation of this subparagraph is a Class D crime.
- Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this paragraph, the date of each prior conviction may precede the commission of the offense being enhanced by more than 10 years;
- B.
 - B-1. At the time of the offense, the person possesses a firearm in the furtherance of the offense, uses a firearm, carries a firearm or is armed with a firearm, and the person grows or cultivates:
 - (3) More than 5 but fewer than 100 marijuana plants. Violation of this subparagraph is a Class C crime; or
 - (4) Five or fewer marijuana plants. Violation of this subparagraph is a Class D crime;
 - C. At the time of the offense, the person enlists or solicits the aid of or conspires with a child who is in fact less than 18 years of age to cultivate marijuana and the person grows or cultivates:
 - (3) More than 5 but fewer than 100 marijuana plants. Violation of this subparagraph is a Class C crime; or

- (4) Five or fewer marijuana plants. Violation of this subparagraph is a Class D crime; or
- D. At the time of the offense, the person is within 1,000 feet of the real property comprising a private or public elementary or secondary school or a safe zone as defined in section 1101, subsection 23 and the person grows or cultivates:
 - (3) More than 5 but fewer than 100 marijuana plants. Violation of this subparagraph is a Class C crime; or
 - (4) Five or fewer marijuana plants. Violation of this subparagraph is a Class D crime
- 2. If a person uses a motor vehicle to facilitate the aggravated cultivating of marijuana, the court may, in addition to other authorized penalties, suspend the person's driver's license or permit, privilege to operate a motor vehicle or right to apply for or obtain a license for a period not to exceed 5 years. A suspension may not begin until after any period of incarceration is served. If the court suspends a person's driver's license or permit, privilege to operate a motor vehicle or right to apply for or obtain a license, the court shall notify the Secretary of State of the suspension and the court shall take physical custody of the person's license or permit. The Secretary of State may not reinstate the person's driver's license or permit, privilege to operate a motor vehicle or right to apply for or obtain a license unless the person demonstrates that, after having been released and discharged from any period of incarceration that may have been ordered, the person has served the period of suspension ordered by the court.
- 3. It is an affirmative defense to prosecution under this section that the substance cultivated or grown is hemp.

§1106. Unlawfully furnishing scheduled drugs

- 1-A. Except as provided in subsection 1-B, a person is guilty of unlawful furnishing of a scheduled drug if the person intentionally or knowingly furnishes what the person knows or believes to be a scheduled drug, which is in fact a scheduled drug, and the drug is:
 - A. A schedule W drug. Violation of this paragraph is a Class C crime;
 - B. A schedule X drug. Violation of this paragraph is a Class D crime;
 - C. A schedule Y drug. Violation of this paragraph is a Class D crime; or
 - D. A schedule Z drug. Violation of this paragraph is a Class D crime.
- 1-B. A person is not guilty of unlawful furnishing of a scheduled drug if the conduct that constitutes the furnishing is expressly:
 - A. Authorized by Title 22, Title 28-B or Title 32;
 - B. Made a civil violation by Title 22 or Title 28-B.
- 3. Proof that the person intentionally or knowingly possesses a scheduled drug that is in fact of a quantity, state or concentration as provided in this subsection, gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person is unlawfully furnishing that scheduled drug:
 - A. More than 2 1/2 ounces of marijuana;
 - B. More than 2 grams of cocaine;
 - C-1. Two grams or more of heroin;
 - C-2. Two grams or more of fentanyl powder;
 - D. Lysergic acid diethylamide in any of the following quantities or concentrations:
 - (1) Not less than 25 squares, stamps, tablets or units of any compound, mixture or substance containing a detectable quantity of lysergic acid diethylamide; or
 - (2) Any quantity of any compound, mixture or substance that, in the aggregate, contains not less than 1,250 micrograms of lysergic acid diethylamide;
 - E. More than 200 milligrams of methamphetamine;
 - F. Any quantity of pills, capsules, tablets, vials, ampules, syringes or units containing any narcotic drug other than heroin that, in the aggregate, contains more than 200 milligrams of the narcotic drug;

- G. Any quantity of pills, capsules, tablets, units, compounds, mixtures or substances that, in the aggregate, contains more than 200 milligrams of oxycodone or more than 200 milligrams of hydromorphone; or
 - H. Fifteen or more pills, capsules, tablets or units containing 3, 4 - methylenedioxymethamphetamine, MDMA, or any other drug listed in section 1102, subsection 1, paragraph O.
5. If a person uses a motor vehicle to facilitate the unlawful furnishing of a scheduled drug, the court may, in addition to other authorized penalties, suspend the person's driver's license, permit, privilege to operate a motor vehicle or right to apply for or obtain a license for a period not to exceed 5 years. A suspension may not begin until after any period of incarceration is served. If the court suspends a person's driver's license, permit, privilege to operate a motor vehicle or right to apply for or obtain a license, the court shall notify the Secretary of State of the suspension and the court shall take physical custody of the person's license. The Secretary of State may not reinstate the person's driver's license, permit, privilege to operate a motor vehicle or right to apply for or obtain a license unless the person demonstrates that, after having been released and discharged from any period of incarceration that may have been ordered, the person has served the period of suspension ordered by the court.
 6. It is an affirmative defense to prosecution under this section that the substance furnished is:
 - A. Hemp.

§1106-A. Aggregation of amounts of drugs seized

1. Quantities of scheduled drugs involved in violations of section 1103, 1105-A, 1105-B, 1105-C or 1106 committed pursuant to one scheme or course of conduct and confiscated within a 6-month period may be aggregated to charge a single violation of appropriate class. Subject to the requirement that the conduct of the defense may not be prejudiced by lack of fair notice or by surprise, the court may at any time order that a single aggregate count be considered as separate violations. An aggregate count of violations may not be deemed duplicative because of such an order and no election may be required. Prosecution may be brought in any venue in which one of the violations aggregated was committed.
2. Quantities of scheduled drugs involved in violation of section 1107-A committed pursuant to one scheme or course of conduct and confiscated within a 48-hour period may be aggregated to charge a single violation of appropriate class. Subject to the requirement that the conduct of the defense may not be prejudiced by lack of fair notice or by surprise, the court may at any time order that a single aggregate count be considered as separate violations. An aggregate count of violations may not be deemed duplicative because of such an order and no election may be required. Prosecution may be brought in any venue in which one of the violations aggregated was committed.

§1107-A. Unlawful possession of scheduled drugs

1. Except as provided in subsection 2, a person is guilty of unlawful possession of a scheduled drug if the person intentionally or knowingly possesses what that person knows or believes to be a scheduled drug, which is in fact a scheduled drug, and the drug is:
 - B. Except as provided in paragraph B-1, a schedule W drug and the drug contains:
 - (1) Heroin (diacetylmorphine) and the amount possessed is more than 200 milligrams;
 - (2) Cocaine and the amount possessed is more than 2 grams;
 - (3) Cocaine in the form of cocaine base and the amount possessed is more than 2 grams;
 - (4) Oxycodone and the amount possessed is more than 200 milligrams;
 - (5) Hydrocodone and the amount possessed is more than 200 milligrams;
 - (6) Hydromorphone and the amount possessed is more than 200 milligrams;
 - (7) Methamphetamine and the amount possessed is more than 200 milligrams; or
 - (8) Fentanyl powder and the amount possessed is more than 200 milligrams.

Violation of this paragraph is a Class C crime;

B-1. A schedule W drug and that drug contains any of the following and at the time of the offense the person had one or more convictions for violating section 1103, 1105-A, 1105-C, 1105-E, 1106 or section 1124 or for engaging in substantially similar conduct in another jurisdiction:

- (1) Heroin (diacetylmorphine);
- (2) Cocaine;
- (3) Cocaine in the form of cocaine base;
- (4) Oxycodone;
- (5) Hydrocodone;
- (6) Hydromorphone;
- (7) Methamphetamine; or
- (8) Fentanyl powder.

Violation of this paragraph is a Class C crime;

C. A schedule W drug, except as provided in paragraphs A, B and B-1. Violation of this paragraph is a Class D crime;

D. A schedule X drug. Violation of this paragraph is a Class D crime;

E. A schedule Y drug. Violation of this paragraph is a Class E crime; or

F. A schedule Z drug. Violation of this paragraph is a Class E crime unless the drug is marijuana, in which case a violation of this paragraph is:

- (1) For possession of over 2 1/2 ounces to 8 ounces of marijuana, a Class E crime;
- (2) For possession of over 8 ounces to 16 ounces of marijuana, a Class D crime;
- (3) For possession of over one pound to 20 pounds of marijuana, a Class C crime; and

2. A person is not guilty of unlawful possession of a scheduled drug if the conduct that constitutes the possession is expressly:

A. Authorized by Title 22, Title 28-B or Title 32; or

B. Made a civil violation by Title 22 or Title 28-B.

3. It is an affirmative defense to prosecution under this section that:

A. The substance possessed is hemp; or

B. The substance possessed is a methamphetamine precursor drug and was possessed by the defendant for a legitimate medical purpose

4. It is an affirmative defense to prosecution under subsection 1, paragraph B, subparagraphs (4) to (6); subsection 1, paragraph B-1, subparagraphs (4) to (6); and paragraphs C to F that the person possessed a valid prescription for the scheduled drug or controlled substance that is the basis for the charge and that, at all times, the person intended the drug to be used only for legitimate medical use in conformity with the instructions provided by the prescriber and dispenser.

5. It is an affirmative defense to prosecution under this section that the substance furnished is:

A. Hemp.

6. Unlawful possession of a scheduled drug does not include possession of a residual amount of any scheduled drug that is contained in one or more hypodermic apparatuses.

§1108. Acquiring drugs by deception

1. A person is guilty of acquiring drugs by deception if, as a result of deception, the person obtains or exercises control over a prescription for a scheduled drug or what the person knows or believes to be a scheduled drug, which is in fact a scheduled drug, and the drug is:

A. A schedule W drug. Violation of this paragraph is a Class C crime;

B. A schedule X drug. Violation of this paragraph is a Class C crime

C. A schedule Y drug. Violation of this paragraph is a Class C crime; or

D. A schedule Z drug. Violation of this paragraph is a Class D crime

2. As used in this section, "deception" has the same meaning as in section 354, subsection 2 and includes:

- A. Failure by a person, after having been asked by a prescribing health care provider or a person acting under the direction or supervision of a prescribing health care provider, to disclose the particulars of every narcotic drug or prescription for a narcotic drug issued to that person by a different health care provider within the preceding 30 days;
- B. Furnishing a false name or address to a prescribing health care provider or a person acting under the direction or supervision of a prescribing health care provider.
- 3. For purposes of this section, information communicated to a prescribing health care provider, or a person acting under the direction or supervision of a prescribing health care provider, in an effort to violate this section, including a violation by procuring the administration of a scheduled drug by deception, may not be deemed a privileged communication.
- 5. For purposes of the causation required by subsection 1, engaging in an act of deception described in subsection 2, paragraph A or B gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303, that the act of deception in fact resulted in the acquisition of any drugs prescribed to that person by that prescribing health care provider or person acting under the direction or supervision of that prescribing health care provider.
- 6. A prescribing health care provider, or a person acting under the direction or supervision of a prescribing health care provider, who knows or has reasonable cause to believe that a person is committing or has committed deception may report that fact to a law enforcement officer. A person participating in good faith in reporting under this subsection, or in participating in a related proceeding, is immune from criminal or civil liability for the act of reporting or participating in the proceeding.

§1109. Stealing drugs

- 1. A person is guilty of stealing drugs if the person violates chapter 15, section 353, 355 or 356-A knowing or believing that the subject of the theft is a scheduled drug, and it is in fact a scheduled drug, and the theft is from a person authorized to possess or traffick in that scheduled drug.
- 2. Stealing drugs is:
 - A. A Class C crime if the drug is a schedule W, X or Y drug; or
 - B. A Class D crime if the drug is a schedule Z drug.

§1111. Illegal possession of hypodermic apparatuses

(REPEALED)

- 1. As used in this section the term "drug paraphernalia" means all equipment, products and materials of any kind that are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, packaging, repackaging, storing, containing or concealing a scheduled drug in violation of this chapter or Title 22, section 2383, except that this section does not apply to a person who is authorized to possess cannabis for medical use pursuant to Title 22, chapter 558-C, to the extent the drug paraphernalia is used for that person's medical use of cannabis; to a person who is authorized to possess cannabis pursuant to Title 28-B, to the extent the drug paraphernalia is used for that person's adult use of cannabis; or to a cannabis store licensed pursuant to Title 28-B, to the extent that the drug paraphernalia relates to the sale or offering for sale of cannabis by the cannabis store. It includes, but is not limited to:
 - A. Kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a scheduled drug or from which a scheduled drug can be derived;
 - B. Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing scheduled drugs;
 - C. Isomerization devices used or intended for use in increasing the potency of any species of plant that is a scheduled drug;
 - E. Scales and balances used or intended for use in weighing or measuring scheduled drugs;

- F. Dilutants and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting scheduled drugs
 - G. Separation gins and sifters, used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana
 - H. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding scheduled drugs;
 - I. Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of scheduled drugs; and
 - J. Containers and other objects used or intended for use in storing or concealing scheduled drugs
2. For purposes of this section, drug paraphernalia does not include hypodermic apparatuses.
 3. 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:
 - A. Statements by an owner or by anyone in control of the object concerning its use
 - B. One or more prior convictions, if any, of an owner, or of anyone in control of the object, for any offense under this chapter or for engaging in substantially similar conduct to that of the Penobscot Nation or Maine offenses under this chapter in another jurisdiction;
 - C. The proximity of the object, in time and space, to a direct violation of this chapter;
 - D. The proximity of the object to scheduled drugs;
 - E. The existence of any residue of scheduled drugs on the object;
 - F. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom the owner knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter may not prevent a finding that the object is intended for use as drug paraphernalia;
 - G. Instructions, oral or written, provided with the object concerning its use;
 - H. Descriptive materials accompanying the object which explain or depict its use;
 - I. National and local advertising concerning its use;
 - J. The manner in which the object is displayed for sale;
 - K. 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;
 - L. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
 - M. The existence and scope of legitimate uses for the object in the community;
 - N. Expert testimony concerning its use.
- 4-A. Except as provided in Title 22, chapter 558-C or in Title 28-B, a person is guilty of use of drug paraphernalia if:
 - A. The person trafficks in or furnishes drug paraphernalia knowing, or under circumstances when that person 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 scheduled drug in violation of this chapter or Title 22, section 2383, and the person to whom that person is trafficking or furnishing drug paraphernalia is:
 - (1) At least 16 years of age. Violation of this subparagraph is a Class E crime; or
 - (2) Less than 16 years of age. Violation of this subparagraph is a Class D crime; or
 - B. The person places in a newspaper, magazine, handbill or other publication an advertisement knowing, or under circumstances when that person reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects intended for use as drug paraphernalia. Violation of this paragraph is a Class E crime.
 - 4-B. Except as provided in Title 22, chapter 558-C or in Title 28-B, a person commits a civil violation if:

- A. The person in fact uses 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 scheduled drug in violation of this chapter or Title 22, section 2383. Violation of this paragraph is a civil violation for which a fine of \$300 must be adjudged, none of which may be suspended; or
 - B. The person possesses 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 scheduled drug in violation of this chapter or Title 22, section 2383. Violation of this paragraph is a civil violation for which a fine of \$300 must be adjudged, none of which may be suspended.
9. Drug paraphernalia possessed in violation of this section is declared to be contraband and may be seized and confiscated by the Nation.
10. It is an affirmative defense to prosecution under this section that the drug paraphernalia used or possessed is used or possessed for the propagation, cultivation or processing of hemp.

§1111-B. Immunity from arrest, prosecution and revocation and termination proceedings when assistance has been requested for suspected drug-related overdose

When a medical professional or law enforcement officer has been dispatched to the location of a medical emergency in response to a call for assistance for a suspected drug-related overdose, the following provisions apply to any protected person at the location when the medical professional or the law enforcement officer arrives. The immunity provisions of subsections 2 and 3 apply for the duration of the response to the medical emergency and end when the medical professional or law enforcement officer leaves the location of the medical emergency.

1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
- A. "Excluded crime" means a crime that does not qualify for immunity as described under subsection 2 or 3. The following crimes are excluded crimes:
 - (1) An offense against a person as described in chapter 9;
 - (2) Sexual assault as described in chapter 11;
 - (3) Sexual exploitation of a minor as described in chapter 12;
 - (4) Kidnapping, criminal restraint and criminal forced labor as described in chapter 13;
 - (5) Robbery as described in section 651;
 - (6) Arson as described in section 802;
 - (7) Aggravated sex trafficking as described in section 852;
 - (8) Sex trafficking as described in section 853;
 - (9) Aggravated attempted murder as described in section 152-A;
 - (10) Abandonment of a child as described in section 553;
 - (11) Endangering the welfare of a child as described in section 554;
 - (12) Unlawful transfer of a firearm other than a handgun to a minor as described in section 554-A;
 - (13) Unlawful transfer of a handgun to a minor as described in section 554-B;
 - (14) Endangering the welfare of a dependent person as described in section 555, subsection 1, paragraph A or B;
 - (15) Incest as described in section 556;
 - (16) Commercial sexual exploitation of a minor or person with a mental disability as described in section 855;
 - (17) Violation of a protection from harassment order issued pursuant to Title 5, chapter 337-A, a protective order in crimes between family members issued pursuant to Title 15, chapter

12-A or a protection from abuse order issued pursuant to Title 19-A, former chapter 101 or Title 19-A, chapter 103;

- (18) A crime that is not listed in this paragraph that was committed against a person who was in fact less than 18 years of age at the time that the crime was committed;
 - (19) Criminal conspiracy as described in section 151 to commit a crime listed in subparagraphs (1) to (18);
 - (20) Criminal attempt as described in section 152 to commit a crime listed in subparagraphs (1) to (18);
 - (21) Criminal solicitation as described in section 153 to commit a crime listed in subparagraphs (1) to (18);
 - (22) OUI as described in Title 29-A, section 2411; and
 - (23) Operating or attempting to operate a watercraft under the influence as described in Title 12, section 10701, subsection 1-A, paragraph B, a snowmobile under the influence as described in Title 12, section 10701, subsection 1-A, paragraph C or an ATV under the influence as described in Title 12, section 10701, subsection 1-A, paragraph D.
- B. "Protected person" means a person who in good faith calls for assistance for another person experiencing a suspected drug-related overdose, any person rendering aid at the location of the suspected drug-related overdose and any person who is experiencing a suspected drug-related overdose.
- C. "Rendering aid" means performing any action that involves looking after a person who is experiencing a suspected drug-related overdose while the person performing the action is awaiting the arrival of a medical professional or law enforcement officer to provide assistance. "Rendering aid" includes, but is not limited to, giving first aid or administering or assisting in the administration of naloxone hydrochloride or another opioid overdose-reversing medication approved by the federal Food and Drug Administration.
- 2. Immunity from arrest or prosecution.** Except with regard to an excluded crime, a protected person is immune from arrest or prosecution for a violation of law if:
- A. The grounds for the arrest or prosecution are obtained as a result of a medical professional's or law enforcement officer's responding to a request for medical assistance; or
 - B. The identity of the protected person is learned or the protected person is identified as a person subject to arrest or prosecution as a result of a medical professional's or law enforcement officer's responding to a request for medical assistance
- 3. Immunity from revocation or termination proceedings.** Except when the charge or conviction is for an excluded crime, a protected person is immune from revocation proceedings with regard to conditions of release as described in Title 15, chapter 105-A, subchapter 5; probation as described in chapter 67, subchapter 1; administrative release as described in chapter 67, subchapter 2; or supervised community confinement as described in Title 34-A, section 3036-A and is immune from termination proceedings for deferred disposition violations as described in chapter 67, subchapter 4 or termination from community confinement monitoring as described in Title 30-A, section 1659-A, if:
- A. The grounds for the revocation or termination proceeding against the protected person are obtained as a result of a medical professional's or law enforcement officer's responding to a request for medical assistance; or
 - B. The identity of the protected person is learned or the protected person is identified as a person subject to a revocation or termination proceeding as a result of a medical professional's or law enforcement officer's responding to a request for medical assistance.
- 4. Motion to determine immunity.** A criminal defendant may move that the court prior to trial determine whether the defendant is immune from prosecution or revocation or termination proceedings pursuant to subsection 2 or 3. Once the defendant has filed a motion and has presented evidence to establish immunity, the prosecution has the burden of proving by clear and convincing

evidence that the grounds for immunity do not apply to the defendant. The court may hear testimony and shall make factual and legal findings as necessary to determine immunity.

§1112. Analysis of scheduled drugs

1. A laboratory that receives a drug or substance from a law enforcement officer or agency for analysis as a scheduled drug shall, if it is capable of so doing, analyze the same as requested by a method designed to accurately determine the composition of the substance, including by chemical means, visual examination, or both, and shall issue a certificate stating the results of the analysis. The certificate, when duly signed and sworn to by a person certified as qualified for this purpose by the Department of Health and Human Services under certification standards set by that department, is admissible in evidence in a court of the State, and gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the composition, quality and quantity of the drug or substance are as stated in the certificate, unless, within 10 days written notice to the prosecution, the defendant requests that a qualified witness testify as to the composition, quality and quantity.
2. Transfers of drugs and substances to and from a laboratory for purposes of analysis under this chapter may be by certified or registered mail, and when so made shall be deemed to comply with all the requirements regarding the continuity of custody of physical evidence.

Official Note for Section 1112

1. Section 1112 of this section: “Department of Health and Human Services” adopted by the Penobscot Nation Chief and Council to include Penobscot Indian Nation Department of Social Services.

§1114. Schedule Z drugs; contraband subject to seizure

All scheduled Z drugs, the unauthorized possession of which constitutes a civil violation under Title 22 or Title 28-B, are contraband, and may be seized and confiscated by the State

§1115. Notice of conviction

On the conviction of any person of a violation of any provision of this chapter, or on a person's being found liable for a civil violation under Title 22 or Title 28-B, a copy of the judgment or sentence and of the opinion of the court or judge, if any opinion is filed, must be sent by the clerk of court or by the judge to the board or officer, if any, by whom the person has been licensed or registered to practice that person's profession or to carry on that person's business if the court finds that such conviction or liability renders that person unfit to engage in that person's profession or business. The court, in its discretion, may suspend or revoke the license or registration of the person to practice that person's profession or to carry on that person's business if the court finds that such conviction or liability renders that person unfit to engage in that person's profession or business. On the application of any person whose license or registration has been suspended or revoked and upon proper showing and for good cause, a board or officer may reinstate that person's license or registration.

§1116. Trafficking or furnishing imitation scheduled drugs

1. Except as provided in subsection 1-A, a person is guilty of trafficking in or furnishing an imitation scheduled drug if the person intentionally or knowingly trafficks in or furnishes an imitation scheduled drug to a person who is:
 - A. At least 18 years of age. Violation of this paragraph is a Class E crime; or
 - B. Less than 18 years of age and the person trafficking or furnishing the imitation scheduled drug is at least 18 years of age. Violation of this paragraph is a Class D crime
- 1-A. A person is not guilty of trafficking in or furnishing an imitation scheduled drug if the conduct that constitutes the trafficking or furnishing is expressly made a civil violation by Title 22, section 2383-A.

2. Proof that the person intentionally or knowingly possesses 100 or more tablets, capsules or other dosage units of an imitation scheduled drug gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person is trafficking in or furnishing imitation scheduled drugs.
5. In determining whether the appearance of a dosage unit of an imitation scheduled drug would lead a reasonable person to believe the substance was a scheduled drug, as required by section 1101, subsection 19, the court shall consider, but is not limited to considering, the following:
 - A. In the case of a substance in tablet, capsule or other solid form, whether the size, shape and color are substantially similar to that of a specific scheduled drug, and in the case of a substance in powdered or liquid form, whether the color, consistency and appearance are substantially similar to that of a specific scheduled drug;
 - B. Whether the markings on each dosage unit are substantially similar to those on a specific scheduled drug; and
 - C. Whether the packaging of, or the labeling of a container containing the substance, bears markings or printed material substantially similar to that accompanying or containing a specific scheduled drug.
6. This section does not apply to:
 - A. Law enforcement officers acting in the course and legitimate scope of their employment;
 - B. Persons who manufacture, process, package, distribute or sell imitation scheduled drugs solely for or to licensed medical practitioners for use as placebos in the course of professional practice or research; and
 - C. Licensed medical practitioners, pharmacists and other persons authorized to dispense or administer scheduled drugs who are acting in the legitimate performance of their professional licenses.

§1117. Cultivating marijuana

1. Except as provided in subsection 4, a person is guilty of cultivating marijuana if:
 - A. The person intentionally or knowingly grows or cultivates marijuana. Violation of this paragraph is a Class E crime; or
 - B. The person violates paragraph A and the number of marijuana plants is:
 - (2) One hundred or more but fewer than 500. Violation of this subparagraph is a Class C crime;
 - (3) More than 5 but fewer than 100. Violation of this subparagraph is a Class D crime; or
 - (4) Five or fewer. Violation of this subparagraph is a Class E crime.
3. It is an affirmative defense to prosecution under this section that the substance cultivated or grown is hemp.
4. A person is not guilty of cultivating marijuana if the conduct is expressly authorized by Title 22, chapter 558-C or Title 28-B.

§1118. Illegal importation of scheduled drugs

1. A person is guilty of illegal importation of scheduled drugs if the person intentionally or knowingly brings, carries or transports a scheduled drug other than marijuana into the Nation from another state or country, unless the person is authorized to import or to possess the scheduled drug under Title 22 or Title 32 or under any law of the United States, of another state or of a foreign country.
2. A violation of this section is:
 - B. A Class C crime if the drug is a schedule X, Y or Z drug.

§1125. Mandatory minimum term of imprisonment for certain drug offenses

1. **Minimum term of imprisonment.** Except as otherwise provided in subsections 2 and 3, for a person convicted of violating section 1105-A, 1105-B, 1105-C, 1105-D or 1118-A the minimum term of imprisonment, which may not be suspended, is as follows:

C. With the exception of a conviction under section 1105-A, 1105-B, 1105-C or 1105-D when the drug that is the basis for the charge is marijuana, when the sentencing class is Class C, the minimum term of imprisonment is one year.

2. Finding by court necessary to impose other than mandatory minimum term of imprisonment.

The court may impose a sentence other than a minimum unsuspended term of imprisonment set forth in subsection 1 if:

A. The court finds by substantial evidence that:

- (1) Imposition of a minimum unsuspended term of imprisonment under subsection 1 will result in substantial injustice to the individual. In making this determination, the court shall consider, among other considerations, whether the individual did not know and reasonably should not have known that the victim was less than 18 years of age;
- (2) Failure to impose a minimum unsuspended term of imprisonment under subsection 1 will not have an adverse effect on public safety; and
- (3) Failure to impose a minimum unsuspended term of imprisonment under subsection 1 will not appreciably impair the effect of subsection 1 in deterring others from violating section 1105-A, 1105-B, 1105-C, 1105-D or 1118-A; and

B. The court finds that the individual's background, attitude and prospects for rehabilitation and the nature of the victim and the offense indicate that imposition of a sentence under subsection 1 would frustrate the general purposes of sentencing set forth in section 1501.

If the court imposes a sentence under this subsection, the court shall state in writing or on the record its reasons for its findings and for imposing a sentence under this subsection rather than under subsection 1.

3. Reduced mandatory minimum term of imprisonment. If the court imposes a sentence under subsection 2, the minimum term of imprisonment, which may not be suspended, is as follows:

C. With the exception of trafficking or furnishing marijuana under section 1105-A or 1105-C, when the sentencing class is Class C, the minimum term of imprisonment is 3 months.

§1126. Special sentencing provisions regarding fines for certain drug offenses

1. Fine based on value of scheduled drugs at time of offense. As authorized by section 1706, subsection 3, if the Nation pleads and proves the value at the time of the commission of a crime of a scheduled drug that is the basis for a conviction under section 1103, 1105-A, 1105-B, 1105-C, 1105-D, 1106 or 1107-A, the convicted person may be sentenced to pay a fine in an amount up to the value, as pleaded and proved by the Nation, of that scheduled drug.

2. Mandatory minimum fine barring court finding exceptional circumstances. In addition to any other authorized sentencing alternative specified in section 1502, subsection 2 for individuals or section 1502, subsection 7 for organizations, the court shall impose a minimum fine of \$400, none of which may be suspended, except as provided in subsection 3, for an individual convicted of a crime under section 1103; 1104; 1105-A; 1105-B; 1105-C; 1105-D; 1106; 1107-A; 1108; 1109; 1111-A, subsection 4-A; 1116; 1117; or 1118.

3. Finding by court necessary to impose other than minimum fine. In the case of an individual, the court may suspend all or a portion of a minimum fine under subsection 2 or impose a fine less than the minimum fine specified in subsection 2 if the court finds by a preponderance of the evidence that there are exceptional circumstances that justify imposition of a lesser financial penalty. In making a finding of exceptional circumstances, the court may consider:

- A. Reliable evidence of financial hardship on the part of the individual and the individual's family and dependents;
- B. Reliable evidence of special needs of the individual or the individual's family and dependents;
- C. Reliable evidence of the individual's income and future earning capacity and the individual's assets and financial resources from whatever source;
- D. Reliable evidence regarding any pecuniary gain derived from the commission of the offense; and

- E. The impact of imposition of the mandatory fine on the individual's reasonable ability to pay restitution under chapter 69.