

“showing the period of imprisonment served under the original sentence, and the certificate shall be annexed to the official records of the defendant’s new commitment.

Chapter 10 – Offenses Against the Person

3-10-1 **Definitions**

3-10-1.1 Definitions in this chapter – Unless a different meaning plainly is required:

- a. “Abduct” means to restrain a person with the intent to prevent his liberation by:
 - i. Secreting or holding him in a place where he is not likely to be found; or
 - ii. Endangering or threatening to endanger the safety of any human being.
- b. “Bodily injury” means physical pain, illness, or any impairment of the function of any bodily member or organ.
- c. “Coercion” means to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.
- d. “Committed Person” means, a person in an addiction treatment facility or anyone committed under judicial warrant order, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person, entrusted to another’s custody by or through a recognized social services agency or otherwise by authority of law.
- e. “Deadly weapon” means any firearm, or other weapon device, instrument, material, or substance, whether animate or inanimate, which in the manner used or is intended to be used is known to be capable of producing death or serious bodily injury.
- f. “Human being” means a person who has been born and is alive at the time of the criminal act.
- g. “Restrain” means to restrict the movement of a person unlawfully and without consent as to interfere substantially with his liberty by removing him from his place of residence or business, by moving him a substantial distance from one place to another, or by confining him for a substantial period. Restraint is “without consent” if it is accomplished by:
 - i. force, intimidation, or deception; or
 - ii. any means, including acquiescence of the victim if he is a child less than fourteen years old or an incompetent person, and if the parent, guardian, or person or institution responsible for the general supervision of his welfare has not acquiesced in the movement or confinement.
- h. “Serious bodily injury” means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.
- i. “Stalking” means engaging in a course of conduct directed at a specific person which conduct would cause a reasonable person:
 - i. to fear for that person’s safety or the safety of others; or
 - ii. to suffer substantial emotional distress.

3-10-2 **Murder**

3-10-2.1 A person is guilty of murder, a Felony offense, if the actor intentionally or knowingly causes the death of another human being by:

- a. Causing the death under circumstances manifesting extreme indifference to the value of human life; or
- b. Acting either alone or with one or more other persons, commits or attempts to commit robbery, burglary, kidnapping, felonious restraint, arson, gross sexual imposition, any felony offense against a child, or escape and, during and in furtherance of such crime or of immediate flight therefrom, the person or any other participant in the crime causes the death of any person.

3-10-3 **Manslaughter**

- 3-10-3.1 A person is guilty of manslaughter, a Felony offense, if he recklessly, without malice, causes the death of another human being. Manslaughter is of two kinds:
- a. Voluntary – Upon a sudden quarrel or heat of passion; or
 - b. Involuntary – In the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due circumspection, of a lawful act which might produce death.

3-10-4 **Negligent Homicide**

- 3-10-4.1 A person is guilty of a Felony offense if he negligently causes the death of another human being.

3-10-5 **Assisting the Commission of Suicide – Causing Death by Suicide**

- 3-10-5.1 A person who intentionally or knowingly aids, abets, facilitates, solicits, or incites another person to commit suicide, or who provides to, delivers to, procures for, or prescribes for another person any drug or instrument with knowledge that the other person intends to attempt to commit suicide with the drug or instrument is guilty of a Felony offense.

- 3-10-5.2 A person who through deception, coercion, or duress, willfully causes the death of another person by suicide is guilty of a Felony offense.

3-10-6 **Kidnapping**

- 3-16-6.1 A person is guilty of kidnapping, a Felony offense, if he abducts another, or having abducted another, continues to restrain him with intent to do the following:
- a. Hold him for ransom or reward.
 - b. Use him as a shield or hostage.
 - c. Hold him in a condition of involuntary servitude.
- a. Terrorize him or a third person.
 - b. Commit a felony or attempt to commit a felony; or
 - c. Interfere with the performance of any governmental or political function.

3-10-7 **Felonious Restraint**

- 3-10-7.1 A person is guilty of a Felony offense if he:
- a. Knowingly abducts another; or
 - b. Knowingly restrains another under terrorizing circumstances or under circumstances exposing him to risk of serious bodily injury; or
 - c. Restrains another with intent to hold him in a condition of involuntary servitude.

3-10-8 **False Imprisonment**

- 3-16-8.1 A person is guilty of a Class 3 Misdemeanor if the actor knowingly restrains another person unlawfully so as to interfere substantially with the liberty of the other person. *(As amended at Section 220.1 by Resolution 96-032-DSB on February 8, 1996)*

3-10-9 **Assault and Battery**

- 3-10-9.1 A person is guilty of a Class 1 Misdemeanor if that person:
- a. Willfully causes substantial bodily harm or injury to another human being; or
 - b. Negligently causes bodily harm or injury to another human being by means of a firearm, destruction device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.

3-10-10 **Aggravated Assault**

- 3-10-10.1 A person is guilty of a Felony offense if that person:

- a. Willfully causes serious bodily injury to another human being;
- b. Knowingly causes bodily injury or substantial bodily injury to another human being with a dangerous weapon or other weapon, the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury;
- c. Knowingly causes bodily injury or substantial bodily injury to another human being while attempting to inflict serious bodily injury on any human being; or
- d. Knowingly fires a firearm or hurls a destructive device at another human being.

3-10-11 **Assault on a Tribal Law Enforcement Officer**

A person is guilty of a Felony offense if that person assaults a tribal law enforcement officer by willfully or negligently causing bodily harm or injury to any tribal law enforcement officer, or tribal police canine, or other law enforcement officer while such officer is engaged in or account of the performance of official duties.

3-10-12 **Killing or Injury of Law Enforcement Support Animal**

3-10-12.1 A person is guilty of a Felony offense if that person willfully and unjustifiably kills, shoots, tortures, torments, beats, kicks, strikes, mutilates, disables, or otherwise injures a law enforcement support animal.

3-10-12.2 A person is guilty of a Class 1 Misdemeanor if that person willfully:

- a. Harasses, taunts, or provokes a law enforcement support animal;
- b. Interferes with a law enforcement support animal while the animal is working; or
- c. Interferes with the individual handling the law enforcement support animal.

3-10-12.3 For purposes of this section, “law enforcement support animal” mean any animal used by or on behalf of a law enforcement officer in the performance of the officer’s functions and duties, including crowd control, corrections, investigations, or search and rescue, regardless of whether the animal is on or off duty.

3-10-12.4 This section does not apply to a law enforcement officer or veterinarian who terminates the life of a law enforcement support animal to relieve the animal of undue suffering and pain.

3-10-13 **Assault on a Tribal Government Employee**

3-10-13.1 A person who assaults by willfully or negligently causing bodily harm to any employee of the Three Affiliated Tribes or any of its sub-divisions while such employee is engaged in or on account of the performance of official duties is guilty of a Class 1 Misdemeanor.

3-10-13.2 A person who assaults by willfully or negligently causing bodily harm or threatens to inflict bodily harm to any tribal council member or former tribal council member in or on account of the performance of official duties is guilty of a Felony offense.

3-10-13.3 A person who shall willfully use, attempt to use, or threaten to use physical force against tribal justice personnel, as defined at subsection 3-16-3.1, shall be guilty of a Felony offense.
(As amended at Section 220.4 and 220.5 by Resolution 08-103-MP on July 10, 2008)

3-10-14 **Custody of Committed Person**

A person is guilty of a Class 3 Misdemeanor if the actor knowingly or recklessly takes or entices any committed person away from lawful custody when he is not privileged to do so.

3-10-15 **Criminal Coercion**

- 3-10-15.1 A person is guilty of a Class 3 Misdemeanor if with purpose to unlawfully restrict another's freedom of action to the detriment of the victim, the actor threatens to:
- a. Commit any criminal offense;
 - b. Accuse anyone of criminal offense;
 - c. Expose any secret tending to subject any person to hatred, contempt, or ridicule or to impair his credit or business repute; or
 - d. Take or withhold action as an official or cause an official to take or withhold action.

- 3-10-15.2 It is an affirmative defense based on subsections 3-10-15.1(b-c), that the actor believes that the accusation or secret to be true or the proposed official action, was justified and the purpose was limited to compelling the other to behave in a way reasonably related to the circumstance of which the subject of the accusation, exposure or proposed official action, as by desiring from further misbehavior, making good, a wrong done, refraining from taking any action or responsibility for which the actor believes the other disqualified.
(Legislative History: Resolution #08-103-MP).

3-10-16 **Reckless Endangerment**

- 3-10-16.1 A person is guilty of a Class 1 Misdemeanor if he recklessly creates a substantial risk of serious bodily injury or death to another human being. The offense is a Felony if the circumstances manifest his extreme indifference to the value of human life.

- 3-10-16.2 There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized.

3-10-17 **Terrorizing**

- A person is guilty of a Class 1 Misdemeanor if, with intent to place another human being in fear for that human being's or another's safety, or to cause the evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious disruption or public inconvenience, or in reckless disregard of the risk of causing such terror, disruption, or inconvenience, the person:
- a. Threatens to commit any crime of violence or act dangerous to human life; or
 - b. Falsely informs another person that a situation dangerous to human life or commission of a crime of violence is imminent knowing that the information is false.

3-10-18 **Felonious Restraint**

- 3-10-18.1 A person is guilty of a Felony offense if he:
- a. Knowingly abducts another;
 - b. Knowingly restrains another under terrorizing circumstances or under circumstances exposing him to risk of serious bodily injury; or
 - c. Restrains another with intent to hold him in a condition of involuntary servitude.

3-10-19 **False Imprisonment**

- 3-10-19.1 A person is guilty of a Class 3 Misdemeanor if the actor knowingly restrains another person unlawfully so as to interfere substantially with the liberty of the other person.
(As amended at Section 220.1 by Resolution 96-032-DSB on February 8, 1996)

3-10-20 **Menacing**

- 3-10-20.1 A person is guilty of a Class 1 Misdemeanor if he intentionally places or attempts to place another human being in reasonable fear of physical injury, serious bodily injury, or death by:

- a. Displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun, or other firearm in a threatening manner; or
- b. Verbally threatens harm to another human or engages in a course of conduct or repeatedly commits acts over a period of time with the intent to cause him reasonable fear of physical injury, serious bodily injury, or death.

3-10-21 **Stalking**

- 3-10-21.1 A person commits the crime of stalking, a Class 3 Misdemeanor, if without lawful authority:
- a. The actor engages in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person and which serves no legitimate purpose. The course of conduct may be directed toward that individual person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment;
 - b. Intentionally engages in the unauthorized tracking of the person's movements or location through the use of global positioning system or other electronic means that would cause a reasonable person to be frightened, intimidated, or harassed and serves no legitimate purpose; and
 - c. The person being harassed or followed is placed in fear that the stalker intends to injure the person or an immediate family member. The feeling of fear must be one that a reasonable person in the same situation would experience under all circumstances.
- 3-10-21.2 For purposes of this section, "immediate family member" has the meaning provided in subsection 3-24-3(1).
- 3-10-21.3 In any prosecution under this section, it is not a defense to the crime of stalking:
- a. That the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; or
 - b. That the stalker did not intend to frighten, intimidate, or harass the person.
- 3-10-21.4 Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to frighten, intimidate, or harass the person. Contact includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.
- 3-10-21.5 It shall be a defense to the crime of stalking that the defendant is a licensed investigator or a law enforcement officer acting within his or her official capacity.
- 3-10-21.6 If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the protected activity.

Chapter 11 – Sex Offenses

- 3-11-1 **Definitions** - the definitions apply throughout this chapter unless a different meaning is plainly required.
- 3-11-1.1
- a. "Broadcast" means to electronically transmit a visual image with the intent that it be viewed by a person or persons.
 - s. "Capture" means, with respect to an image, to videotape, photograph, film, or record by any means, or to broadcast.
 - t. "Child, children, minor, and juvenile" means a person under the age of eighteen (18) years.

- u. “Child pornography” means any visual depiction, including any photograph, film, video, picture or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:
 - i. The production of such visual depiction involves the use of a child engaging in sexually explicit conduct;
 - ii. Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a child engaging in sexually explicit conduct; or
 - iii. Such visual depiction has been created, adapted, or modified to appear that an identifiable child is engaging in sexually explicit conduct.
- v. “Cohabit” means to live together under the representation or appearance of being married.
- w. “Coercion” means:
 - i. Threats of serious harm to or physical restraint against any person;
 - ii. Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
 - iii. The abuse or threatened abuse of law or the legal process.
- x. “Commercial sex act” means any sex act for which anything of value is given to or received by any person.
- y. “Deviate sexual act” means any form of sexual contact with an animal, bird, or dead person.
- z. “Disseminate” means to sell, lease, rent, advertise, broadcast, transmit, exhibit, or distribute for pecuniary gain.
- aa. “Female breast” means any portion of the naked female breast below the top of the areola.
- bb. “House of Prostitution” means any place where prostitution or promotion of prostitution is regularly conducted by one person under the control, management, or supervision of another.
- cc. “Husband and Wife or spouse” means couples who reside together and persons living together in a spouse-like relationship, regardless of the legal status of their relationship.
- dd. “Inmate” is a person who engages in prostitution in or through the agency of a house of prostitution.
- ee. “Lewd” means behaviors that are sexual in nature, performed with the intention of sexually arousing either the perpetrator or the person to whom the conduct is directed.
- ff. “Material” means any physical object, including, but not limited to, any type of book, sound recording, film, or picture used as a means of presenting or communicating information, knowledge, sensation, image, or emotion to or through a human being’s receptive senses.
- gg. “Material that is harmful to children” means any communication, consisting of nudity, sexually explicit conduct, or excretion that, taken as a whole and with reference to its context:
 - i. Predominately appeals to a prurient interest of children;
 - ii. Is patently offensive to prevailing standards in the community with respect to what is suitable material for children; and
 - iii. Lacks serious literary, artistic, political, or scientific value for children.
- hh. “Object” means anything used in commission of a sexual act other than the person of the actor. This definition is restricted for use only in defining conduct of sexual offenses.
- ii. “Obscene material and obscene performance” mean material or a performance which:
 - i. Taken as a whole, the average person, applying contemporary Mandan, Hidatsa, Arikara Nation and North Dakota standards, would find predominately appeals to a prurient interest;
 - ii. Depicts or describes in a patently offensive manner sexual conduct, whether normal or perverted; and
 - iii. Taken as a whole, the reasonable person would find it lacking in serious literary, artistic, political, or scientific value or purpose.

- jj. "Private area" means the naked or undergarment clad genitals, pubic area, buttocks, or female breast of the individual.
- kk. "Prurient interest" means a voyeuristic, lascivious, degrading, shameful, or morbid interest in nudity, sexual matters, or excretion that goes substantially beyond customary limits of candor in description or representation of those matters.
- ll. "Reasonable expectation of privacy" means:
 - ii. Circumstances in which a reasonable person would believe that he could disrobe in privacy, without being concerned that an image of a private area of the individual was being captured; or
 - iii. Circumstances in which a reasonable person would believe that a private area of the individual would not be visible to the public, regardless of whether that individual is in a public or private place.
- v. "Serious harm" means any harm, whether physical or non-physical, including psychological, financial, or reputational harm, which is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.
- w. "Sexual activity" is inclusive of definitions listed in subsections "sexual act" 3-11-1(x), "sexual contact" 3-11-1(y), and "deviate sexual act" 3-11-1(h) of this section.
- x. "Sexual act" means sexual contact between human beings consisting of:
 - i. Contact between the penis and vulva, or the penis and the anus, and for purposes of this chapter, contact involving the penis occurs upon penetration, however slight;
 - ii. contact between the mouth and the penis, the mouth and the vulva, or the mouth-and the anus;
 - iii. the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person; or
 - iv. the intentional touching, not through clothing, of the genitalia of another person that has not attained the age of eighteen (18) years with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person.
 - v. Emission is not required.
- y. "Sexual contact" means any intentional touching, whether or not through the clothing or covering, of the sexual, intimate or other body parts of a person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of a person, with intent to abuse humiliate, harass, degrade, or arouse or satisfy the sexual or aggressive desires of any person.
- z. "Sexually explicit conduct" means actual or simulated:
 - i. Sexual activity;
 - ii. Masturbation;
 - iii. Sexual bestiality;
 - iv. Sadistic or masochistic abuse; or
 - v. Lascivious exhibition of the genitals, pubic or rectal area of any person, or bare female breasts.
- aa. "Simulated" means the explicit depiction of conduct that creates the appearance of such conduct.
- bb. "Venture" means any group of two (2) or more individuals associated in a common scheme or purpose, whether a legal entity or not.
- cc. "Visual depiction" means any developed and/or undeveloped film, photograph, slide and/or videotape, and any photocopy, drawing, printed or written material, digital media and any data stored on a computer, or computer device capable of conversion into a visual image. Artificial intelligence generated images are included in this definition.

3-11-2 **Rape**

- 3-11-2.1 A person who intentionally engages in a sexual act with another, or causes another to engage in a sexual act, is guilty of a Felony offense if:
- a. The actor compels the other person to submit by force or by any threat of serious bodily injury, death, or kidnapping against the victim or other persons;
 - b. The victim is incapable of giving consent to the sexual act due to a physical or mental incapacity;
 - c. The victim is incapable of giving consent because of any intoxicants, narcotic, or anesthetic agent;
 - d. The victim is unconscious;
 - e. The victim submits because the victim mistakenly believes the actor to be someone he is not; or
 - f. The victim is in official custody or otherwise detained in a hospital, prison, or other similar institution and the actor has supervisory or disciplinary authority over the victim.

3-11-3 **Assault with Intent to Commit Rape**

- 3-11-3.1 A person who shall knowingly assault another person with intent to commit rape is guilty of a Class 1 Misdemeanor.

3-11-4 **Statutory Rape**

- 3-11-4.1 A person who knowingly engages in a sexual act with a person who is under the age of seventeen (17) years and who is at least four (4) years older than the victim, or any person who knowingly aids or permits any such violation is guilty of a Felony offense.

3-11-5 **Sexual Abuse of a Ward**

- 3-11-5.1 A person who knowingly engages in sexual activity with another individual, or attempts to do so, is guilty of a Felony offense when that individual is:
- a. In official detention; or
 - b. Under the custodial, supervisory, or disciplinary supervision of the person so engaging.

3-11-6 **Sexual Assault**

- 3-11-6.1 A person who intentionally has sexual contact with another person without the consent of such other person is guilty of a Felony offense.

3-11-7 **Sexual Assault of a Child**

- 3-11-7.1 A person who intentionally has sexual contact with a person under eighteen (18) years of age, or who causes another person to do so is guilty of a Felony offense.

3-11-8 **Indecent Exposure**

- 3-11-8.1 A person is guilty of a Class 4 Misdemeanor if, he does any lewd act which he knows is likely to be observed by other who would be affronted or alarmed for the purpose of arousing or gratifying the sexual desire of himself or of any person other than his spouse, he knowingly and purposefully exposes his penis, vulva, or anus under circumstances in which he knows his conduct is likely to cause alarm, annoyance, or insult to the sensibilities of a reasonable person.
- 3-11-8.2 It is a Class 1 Misdemeanor if a person purposely exposes his penis, vulva, or anus to a minor in any public or private place or by any electronic means.

3-11-9 **Incest**

- 3-11-9.1 A person is guilty of incest, a Class 2 Misdemeanor, if he knowingly marries, cohabits, or engages in sexual acts or contacts with another person whom he knows to be a relative in the whole or half

blood. Sexual relationships with a person's mother, father, sister, brother, grandparent, aunt, uncle, or cousin of the first or second degree are prohibited. The relationships referred to herein include blood relationships without regard to legitimacy, and relationships of parents and child by adoption.

3-11-10 **Loitering to Solicit Sexual Activity**

3-11-10.1 A person is guilty of a Class 4 Misdemeanor if he knowingly loiters in or near any public place for the purpose of soliciting or being solicited to engage in sexual activity. For purposes of this section, sexual activity includes any other deviant sexual relations.

3-11-11 **Prostitution**

3-11-11.1 A person is guilty of prostitution, a Class 3 Misdemeanor, if he:

- a. Is an inmate of a house of prostitution or otherwise engages in sexual activity as a business;
- b. Loiters in or within view of any public place for the purpose of being hired to engage in sexual activity;
- c. Solicits another person with the intention of being hired to engage in sexual activity; or
- d. Agrees to engage in sexual activity with another person for money or other items of pecuniary value.

3-11-11.2 It shall be presumed that any individual under the age of eighteen (18) years who had engaged or is engaging in an offense under this section was or is doing so against his will unless the tribal prosecutor can overcome such presumption beyond a reasonable doubt.

3-11-12 **Promoting Prostitution**

3-11-12.1 A person who knowingly promotes prostitution of another is guilty of a Class 2 Misdemeanor. The following acts shall constitute promoting prostitution:

- a. Owning, controlling, managing, supervising, or otherwise keeping, alone or in association with others, a house of prostitution business;
- b. Procuring an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate;
- c. Encouraging, inducing, or otherwise purposely causing another to become or remain a prostitute;
- d. Soliciting a person to patronize a prostitute;
- e. Procuring a prostitute for a patron;
- f. Transporting a person into or within this reservation with purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose; or
- g. Leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be used for prostitution, the promotion of prostitution, or failure to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means; or
- h. Soliciting, receiving, or agreeing to receive any benefit for doing or agreeing to do anything prohibited by this subsection.

3-11-13 **Engaging in Prostitution**

3-11-13.1 A person is guilty of a Class 3 Misdemeanor if that person:

- a. Offers or agrees to provide money or other items of pecuniary value to another individual with the intention of engaging in sexual activity;
- b. Enters or remains in a house of prostitution with intent to engage in sexual activity; or
- c. Solicits another person to procure a prostitute or commit an act of prostitution and
If the prostitute is under the age of eighteen (18) years, the offense level increases to a felony.

3-11-14 **Sex Trafficking**

3-11-14.1 A person is guilty of the Felony offense of sex trafficking when that person knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion or any combination of such means, will be used or is being used to cause the individual to engage in a commercial sex act or that the individual has not attained the age of eighteen (18) years and will be caused to engage in a commercial sex act, and:

- a. Promotes, recruits, entices, harbors, transports, provides, obtains, or maintains by any means another person over the age of eighteen (18), knowing that person may be subjected to sex trafficking; or
- b. Benefits, financially or receives anything of value, from knowing participation in or having reason to know that it is derived from an act of a sex trafficking venture which has, or still is, engaged in any act described in the above paragraph subsection 3-11-14.1(a).

3-11-14.2 In a prosecution under subsection 3-11-14.1(a) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained, or maintained, the prosecutor need not prove that the defendant knew that the person had not attained the age of eighteen (18) years.

3-11-14.3 Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be guilty of accomplice to the offense under prosecution.

3-11-15 **Video Voyeurism**

3-11-15.1 A person is guilty of the Felony offense of video voyeurism if that person, with an intent to capture an image of a private area of an individual, without the individual's consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy. This section does not prohibit any lawful law enforcement, correctional, or intelligence activity.

3-11-16 **Entering Reservation with a Child to Engage in Sexual Act**

3-11-16.1 Any person who enters into the Fort Berthold jurisdictional boundaries with intent to engage in sexual activity with a child who has not attained the age of eighteen (18) years shall be guilty of a Felony offense. In a prosecution under this section, the prosecutor need not prove that the defendant knew that the child was under the age of eighteen (18) years.

3-11-17 **Sexual Exploitation of Children**

3-11-17.1 A person is guilty of the Felony offense of sexual exploitation of children if that person:

- a. Knowingly employs, uses, persuades, induces, entices, or coerces any child to engage in, or who has a child assist any other person to engage in or who transports any child into the Fort Berthold reservation with the intent that such child engages in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct;
- b. Any parent, legal guardian, or person having custody or control of a child who knowingly permits such child to engage in or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct;
- c. Any person knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering:
 - i. To receive, exchange, buy, produce, display, distribute or reproduce any visual depiction, if the production of such visual depiction involves the use of a child engaging in sexually explicit conduct and such visual depiction is of such conduct;or

- ii. Participation in any act of sexually explicit conduct by or with any child for the purpose of producing a visual depiction of such conduct.

3-11-17.2 Any organization that violates, attempts to violate, or conspires to violate this section shall be fined in accordance with the maximum fine penalty for a felony offense.

3-11-17.3 There is no limitation on the time in which a charge may be filed, or prosecution may commence for any offense under the section involving a victim who is under eighteen (18) years of age at the time of the alleged offense.

3-11-17.4 The prosecutor shall file a criminal complaint against a “John/Jane Doe” where there is physical evidence (forensic interview/examination, DNA, fingerprints, false name given, etc.) that a child is a victim of a human trafficking crime but where the perpetrator is unknown.

3-11-18 **Selling or Buying of Children**

3-11-18.1 Any parent, legal guardian, or other person having custody or control of a child who sells or otherwise transfers custody or control of such child, or offers to sell or otherwise transfer custody of such child shall be guilty of a Felony offense if, either:

- a. With knowledge that, because of the sale or transfer, the child will be portrayed in a visual depiction engaging in or assisting another person to engage in, sexually explicit conduct;
- b. With intent to promote either:
 - i. The engaging in of sexually explicit conduct by such child for the purpose of producing any visual depiction of such conduct; or
 - ii. The rendering of assistance by the child to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

3-11-18.2 A person is guilty of a Felony offense if that person purchases or otherwise obtains custody or control of a child, or offers to purchase or otherwise obtain custody or control of a child, if either:

- a. With knowledge that, as a consequence of the sale or transfer, the child will be portrayed in a visual depiction engaging in or assisting another person to engage in, sexually explicit conduct; or
- b. With intent to promote either:
 - i. The engaging in of sexually explicit conduct by such child for the purpose of producing any visual depiction of such conduct; or
 - ii. The rendering of assistance by the child to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

3-11-19 **Materials Involving the Sexual Exploitation of Children**

3-11-19.1 A person is guilty of a Felony offense if that person, knowingly:

- a. Transports or ships by any means including computer or mails, any depiction, if:
 - i. The producing of such visual depiction involves the use of a child engaging in a sexually explicit conduct; and
 - ii. Such visual depiction is of such conduct.
- b. Receives or distributes any visual depiction using any means, or knowingly reproduces any visual depiction for distribution using any means, if:
 - i. The producing of such visual depiction involves the use of a child engaging in sexually explicit conduct; and
 - ii. Such visual depiction is of such conduct.
- c. Sells or possesses with intent to sell any visual depiction, if:
 - i. The producing of such visual depiction involves the use of a child engaging in sexually explicit conduct; and

- ii. Such visual depiction is of such conduct.
- d. Possesses or knowingly accesses with intent to view, one (1) or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction, if:
 - i. The producing of such visual depictions involves the use of a child engaging in sexually explicit conduct; and
 - ii. Such visual depiction is of such conduct.

3-11-20 **Materials Constituting or Containing Child Pornography**

3-11-20.1 A person is guilty of a Felony offense who, knowingly:

- a. Mails, or transports or ships by any means, including by computer, any child pornography; or Receives or distributes:
 - i. Any child pornography by any means, including by computer; or
 - ii. Any material that contains child pornography by any means, including computer.
- b. Reproduces any child pornography for distribution by any means, including by computer;
- c. Advertises, promotes, presents, or solicits by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains:
 - i. An obscene visual depiction of a child engaging in sexually explicit conduct, or
 - ii. A visual depiction of an actual child engaging in sexually explicit conduct;
- d. Sells or possesses with intent to sell any child pornography;
- e. Possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer device or any other material that contains an image of child pornography;
- f. Distributes, offers, sends, or provides to a child any visual depiction, including any photograph, film, video, picture or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, where such visual depiction is, or appears to be, of a child engaging in sexually explicit conduct for purposes of inducing or persuading a child to participate in any such same or similar illegal activity; or
- g. Produces with intent to distribute, or distributes, by any means, including a computer, child pornography that is an adapted or modified depiction of an identifiable child.

3-11-20.2 On motion of the prosecuting attorney, in any prosecution under this section, except for good cause shown, the name, address, social security number or other non-physical identifying information, other than the age or approximate age of any child who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the prosecutor, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual child.

3-11-20.3 Any person wronged either physically, emotionally, or psychologically by reason of the prohibited conduct of subsections 3-11-20.1(a-g), may commence a civil action for the relief set forth in the below subsection 3-11-20.4(a-c).

3-11-20.4 In any action commenced in accordance with subsection 3-16-20.1, the court may award appropriate relief, including:

- a. Temporary, preliminary, or permanent injunctive relief;
- b. Compensatory and punitive damages; and
- c. The costs of the civil action and reasonable fees for attorneys and expert witnesses.

3-11-21 **Obscenity**

3-11-21.1 A person is guilty of a Class 3 Misdemeanor if he knowingly or recklessly:

- a. Sells, delivers, or provided, or offers or agrees to sell, deliver, or provide, and obscene writing, picture, record, or other representation or embodiment of the obscene;

- b. Presents or directs an obscene play, dance, or performance, or participates in that portion thereof which makes it obscene;
- c. Publishes, exhibits, or otherwise makes available any obscene material;
- d. Possesses any obscene material for purposes of sale or other commercial dissemination; or
- e. Sells, advertises, or otherwise commercially disseminates material, whether or not obscene, by representing or suggesting that it is obscene.

3-11-21.2 A person who disseminates or possesses obscene material in the course of his or her business is presumed to do so knowingly or recklessly.

3-11-21.3 In any prosecution under this section, evidence shall be admissible to show:

- a. The character of the audiences for which the material was designed or to which it was directed;
- b. What the predominant appeal of the material would be for ordinary adults or any special audience to which it was directed, and what effect, if any, it would have on the conduct of such people;
- c. Artistic, literary, scientific, educational, or other merits of the material;
- d. The degree of public acceptance of the material in the Mandan, Hidatsa, Arikara Nation. Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; and
- e. The good repute of the author, creator, publisher, or other person from whom the material originated.

3-11-22 **Misleading Domain Names on the Internet**

3-11-22.1 A person shall be guilty of a Felony offense who knowingly uses a misleading domain name on the internet with the intent to deceive, either:

- a. A person into viewing material constituting obscenity; or
- b. A child into viewing material that is harmful to children.

3-11-22.2 For purposes of this section, a domain name that includes a word or words to indicate the sexual content of a site, such as “sex” or “porn”, is not misleading.

3-11-23 **Misleading Words or Digital Images on the Internet**

3-11-23.1 A person shall be guilty of a Felony offense who knowingly embeds words or digital images into a source code of a website with the intent to deceive, either:

- a. A person into viewing material constituting obscenity; or
- b. A child into viewing material that is harmful to children.

3-11-23.2 For purposes of this section, a domain name that includes a word or words to indicate the sexual content of a site, such as “sex” or “porn”, is not misleading.

3-11-24 **Use of Child’s Name for Illicit Purpose**

3-11-24.1 A person shall be guilty of a Felony offense who knowingly uses, or attempts to do so, the name, address, telephone number, social security number or electronic mail address of an individual, knowing that individual has not attained the age of eighteen (18) years, with the intent to entice, encourage, offer, or solicit another person to engage in any sexual activity for which any person can be charged with a criminal offense.

3-11-25 **Open Lewdness**

3-11-25.1 A person is guilty of a Class 4 Misdemeanor if he knowingly does any lewd act, sexual in nature, and the actor knows it will be observed by others which act would be considered indecent or shocking to a reasonable person.

3-11-26 **Credibility or Conduct of Complaining Witness**

3-11-26.1 In a prosecution for any sex offense under this chapter 3-11, opinion evidence, reputation evidence, and evidence of specific instances of the complaining witness' sexual conduct or any other such prior acts evidence, is not admissible on behalf of the defendant to prove consent by the complaining witness where lack of consent is an element of the offense.

3-11-27 **Affirmative Defenses**

3-11-27.1 It shall be an affirmative defense to a charge of prostitution that the individual is or was a victim of sex or human trafficking or acted under duress or otherwise against his will.

3-11-27.2 It shall be an affirmative defense to a charge under subsections 3-11-14 or 3-11-15 that the defendant:

- a. Possessed less than three (3) matters containing any visual depiction proscribed by that paragraph; and
- b. Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof:
 - i. Took reasonable steps to destroy each such visual depiction; or
 - ii. Reported the matter to a law enforcement agency and afforded that agency access to each such depiction.

3-11-27.3 It shall be an affirmative defense to a prosecution under sections 3-11-17, 3-11-19, 3-11-20 of this chapter that:

- a. The alleged child pornography was produced using an actual person or persons engaged in sexually explicit conduct, and each such person was an adult at the time the material was produced; or
- b. The alleged child pornography was not produced using any actual child or children.

3-11-27.4 It shall be an affirmative defense to prosecution under section 3-11-21 of this chapter that dissemination was restricted to:

- a. Institutions or person having scientific, educational, governmental, or other similar justification for possessing obscene material; or
- b. Non-commercial dissemination to personal associates of the actor.

Chapter 12– Offenses Against Property

3-12-1 **Definitions**

3-12-1.1 In this chapter, unless a different meaning plainly is required:

- a. “In the course of committing” means the act of offense occurs in an attempt to commit an offense or in flight after the attempt or commission of the offense.
- b. “Night” means the period between thirty minutes past sunset and thirty minutes before sunrise.
- c. “Occupied Structure” means any structure, boat, vehicle, or place adapted for overnight accommodations of persons or for carrying on business or other activity therein. Such structure is an occupied structure whether or not a person is actually present.

3-12-2 **Arson and Related Offenses**

3-12-2.1 A person is guilty of arson, a Felony offense, if he starts a fire or causes an explosion with the purpose of:

- a. Destroying a building or occupied structure of another; or
- b. Destroying or damaging any property, whether his own or the property of another, to collect insurance for such loss.

3-12-2.2 A person is guilty of arson, a Felony offense, if he purposely starts a fire or causes an explosion, whether on his own property or property of another, and thereby recklessly:

- a. Places another person in danger of death or bodily injury; or
- b. Places a building or occupied structure of another in danger of damage or destruction.

3-12-2.3 A person is guilty of a Class 1 Misdemeanor if he knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable steps to put out or control the fire, when he can do so without substantial risk to himself, or fails to give a prompt fire alarm, if:

- a. He knows he is under an official, contractual, or other legal duty to prevent or combat the fire; or
- b. The fire was started, albeit lawfully, by him with his assent, or on property in his custody or control.

3-12-3 **Causing or Risking Catastrophe**

3-12-3.1 A person is guilty of Felony offense if he purposely, knowingly, or recklessly causes a catastrophe by explosion, fire, flood, avalanche, collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance, or by any other means of causing potentially widespread injury or damage.

3-12-3.2 A person is guilty of a Class 3 Misdemeanor if he recklessly creates a risk of catastrophe in the employment of fire, explosives or other dangerous means as listed in section 3-12-3.1 above.

3-12-3.3 A person who knowingly or recklessly fails to take reasonable measures to prevent or mitigate a catastrophe commits a Class 3 Misdemeanor if:

- a. He knows that he is under an official, contractual, or other legal duty to take such measures; or
- b. He did or assented to the act causing or threatening the catastrophe.

3-12-4 **Criminal Mischief**

3-12-4.1 A person is guilty of criminal mischief, a Felony offense, if he:

- a. Damages tangible property of another purposely, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means;
- b. Purposely or recklessly tampers with tangible property of another as to endanger person or property;
- c. The actor causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public service;
- d. Purposely or recklessly causes another to suffer pecuniary loss by deception or threat; or
- e. The pecuniary loss is in excess of five thousand (5,000) dollars.

3-12-4.2 A person is guilty of criminal mischief, a Class 3 Misdemeanor, if he purposely causes a pecuniary loss of one hundred (100) dollars or greater, but not less than twenty-five (25) dollars.

3-12-5 **Burglary and Other Criminal Intrusion**

3-12-5.1 A person is guilty of burglary, a Felony offense, if the actor breaks and enters a building or other occupied structure, or separately secured or occupied portion thereof, with purpose to commit a crime therein and, either:

- a. Perpetrates the burglary in the dwelling of another at night; or
- b. Purposely, knowingly, or recklessly inflicts or attempts to inflict bodily injury on any person; or
- c. Is armed with explosives or a deadly weapon.

- 3-12-5.2 A person may not be convicted both for burglary and for the offense which it was his purpose to commit after the burglarious entry or for attempt to commit that offense unless the additional offense is also a felony offense.
- 3-12-6 **Criminal Trespass**
- 3-12-6.1 A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in any building or occupied structured, or separately secured or occupied portion thereof. An offense under this subsection is a Class 2 Misdemeanor if it is committed in a dwelling at night. Otherwise, it is a Class 3 Misdemeanor.
- 3-12-6.2 A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:
- a. Actual communication to the actor; or
 - b. Posting in a manner prescribed by law or reasonable likely to come to the attention of intruders; or
 - c. Fencing or other enclosures manifestly designed to exclude intruders.
 - d. An offense under this subsection 3-12-6.2 constitutes as a Class 3 Misdemeanor if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person. Otherwise, it is a Class 4 Misdemeanor.
- 3-12-6.3 It is an affirmative defense to a prosecution under subsections 3-12-6.1 and 3-12-6.2 that:
- a. A building or occupied structure involved in the offense was abandoned; or
 - b. The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or
 - c. The actor reasonably believed the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain.
- 3-12-7 **Robbery**
- 3-12-7.1 A person is guilty of robbery, a Felony offense, if the actor knowingly takes money or goods in the possession of another, from his person or immediate presence by force or intimidation, and in the course of the robbery, the actor:
- a. Inflicts serious bodily injury upon another; or
 - b. Threatens another with or purposely puts him in fear of immediate serious bodily injury; or
 - c. Is armed with a deadly weapon or explosive.

Chapter 13 – Theft and Related Offenses

- 3-13-1 **Definitions**
- 3-13-1.1 In this chapter, unless a different meaning plainly is required:
- a. “Dealer” means a person in the business of buying or selling goods including a pawnbroker.
 - b. “Deprive” means:
 - i. To withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or
 - ii. With intent to restore only upon payment of reward or other compensation, or
 - iii. To dispose of the property so as to make it unlikely that the owner will recover it.
 - c. “Financial Institution” means a bank, insurance company, credit union, building and loan association, investment trust or other organization held out of the public as a place of deposit of funds or medium of savings or collective investment.
 - d. “Government” means the United States, any federal Indian reservation, state, county, municipality, or other political unit, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association conducting the functions of government.

- e. “Moveable property” means property the location of which can be changed including things growing on, affixed to, or found in land, and documents although the rights represented thereby have no physical location. “Immovable property” is all other property.
- f. “Obtain” means:
 - i. In relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the obtainer or another; or
 - ii. In relation to labor or service, to secure performance thereof.
- g. “Property” means anything of value, including real estate, tangible and intangible personal property, contractual rights, choses-in-action, and other interests in or claims to wealth, admission, or transportation tickets, captured or domestic animals, food and drink, electric or other power.
- h. “Property of another” means property, in which a person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because that property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.
- i. “Receiving” means acquiring possession, control or title or lending on the security of the property.
- j. “Service” means labor, professional services, transportation, telephone, or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, use of vehicle or other movable property.

3-13-2 **General Provisions and Grading of Theft Offenses**

3-13-2.1

- Conduct denominated theft in this chapter constitutes a single offense. An accusation of theft may support evidence that it was knowingly committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the charging document, subject only to the power of the court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or surprise.
- a. Theft constitutes a Felony offense if the amount involved exceeds five thousand (5,000) dollars, is taken from the person by threat, in breach of a fiduciary obligation, or if the property stolen is a firearm, automobile, airplane, motorcycle, motorboat, or motor propelled vehicle, or in the case of theft by receiving stolen property if the receiver is in the business of buying or selling stolen property.
 - b. Theft not within the preceding subsection 3-13-2.1(a) constitutes a Class 3 Misdemeanor, if the property was not taken from the person by threat, or in breach of fiduciary obligation, and the amount involved was more than fifty (50) dollars but less than five thousand (5,000) dollars.
 - c. The amount involved in a theft shall be deemed to be the highest value, by any reasonable standard, of the property or services which the actor stole or attempted to steal. Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.
 - d. If it is an affirmative defense to prosecution for theft that the actor reasonably believed:
 - i. That he was unaware that the property or service was that of another;
 - ii. That he acted under an honest claim of right to the property or service involved;
 - iii. That he had a right to acquire or dispose of it as he did;
 - iv. When he took property exposed for sale, he intended to purchase and pay for it promptly, or
 - v. That the owner, if present, would have consented.

- e. It is no defense that theft was from the actor's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.

3-13-3 **Theft by Unlawful Taking or Disposition**

3-13-3.1 A person is guilty of theft, a Class 3 Misdemeanor, if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive the rightful owner of the property.

3-13-3.2 A person is guilty of theft, a Class 3 Misdemeanor, if he transfers immovable property of another or any interest therein with intent to benefit the actor or another not entitled to the property.

3-13-4 **Theft by Deception**

3-13-4.1 A person is guilty of theft by deception, a Class 3 Misdemeanor, if he purposely obtains property of another by deception. A person deceives if he:

- a. Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
- b. Prevents another from acquiring information which would affect his judgment or a transaction;
- c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or
- d. Fails to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property which he transfers of 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.

3-13-4.2 The term "deceive" does not, however, include falsity as to matters having no pecuniary significance or puffing by statements unlikely to deceive ordinary person in the group addressed.

3-13-5 **Theft by Extortion**

3-13-5.1 A person is guilty of theft by extortion, a Class 3 Misdemeanor, if he purposely obtains property of another by threatening to:

- a. Inflict bodily injury on anyone or commit any other criminal offense;
- b. Accuse anyone of a criminal offense;
- c. Expose any secret tending to subject anyone to hatred, contempt, ridicule, or impair his credit or business repute;
- d. Take or withhold action as an official, or cause an official to take or withhold action;
- e. Bring about or continue a strike, boycott, or other collective unofficial action, if the property is demanded or received for the benefit of the group in whose interest the actor purports to act;
- f. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- g. Inflict any other harm which would not benefit the actor.

3-13-5.2 It is an affirmative defense to prosecution under this section that the property obtained by threat of accusation, exposure, lawsuit, or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstance to which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services.

3-13-6 **Theft of Property Lost, Mislaid, or Delivered by Mistake**

3-13-6.1 A person is guilty of theft, a Class 3 Misdemeanor who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient if, with purpose to deprive the owner thereof, he fails to take reasonable steps to restore the property to a person entitled to have it.

3-13-7 **Receiving Stolen Property**

3-13-7.1 A person is guilty of theft, a Class 3 Misdemeanor, if he purposely receives, retains, or disposes of moveable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with purpose to restore it to the owner.

3-13-7.2 A person is guilty of theft, a Felony offense, in the case of theft by receiving stolen property if the receiver is in the business of buying or selling stolen property.

- a. The requisite knowledge or belief is presumed in the case of a dealer who:
 - i. Is found in possession or control of property stolen from two or more persons on separate occasions; or
 - ii. Has received stolen property in another transaction within the year preceding the transaction charged.
- b. Being a dealer in property of the sort received, acquired if for a consideration which he knows is far below its reasonable value. If the amount involved was fifty (50) dollars or less, then the offense in this instance constitutes a Class 4 misdemeanor.

3-13-8 **Theft of Service**

3-13-8.1 A person is guilty of theft, a Class 3 Misdemeanor, if he purposely obtains services which he knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service.

- a. Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay give rise to a presumption that the service was obtained by deception as to intention to pay.
- b. A person commits theft, a Class 3 Misdemeanor, if having control over the disposition of services of others, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

3-13-9 **Theft by Failure to Make Required Disposition of Funds Received**

3-13-9.1 A person who purposely obtains property upon agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft, a Class 3 Misdemeanor, if he deals with the property obtained as his own and fails to make the required payment or disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition.

3-13-9.2 An officer or employee of the government or of a financial institution is presumed:

- a. To know any legal obligation relevant to his criminal liability under this section; and
- b. To have dealt with the property as his own if he fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

3-13-10 **Unauthorized Use of Automobiles and Other Vehicles**

3-13-10.1 A person is guilty of a Class 3 Misdemeanor if he operates another’s automobile, airplane, motorcycle, motorboat, or other motor propelled vehicle without consent of owner. It is an affirmative defense to prosecution under this section that the actor reasonably believed that the owner would have consented to the operation had he known of it.

Chapter14 – Forgery and Fraudulent Practices

3-14-1 **Definitions**

3-14-1.1 In this chapter, the definitions given apply unless a different meaning plainly is required.

- a. “Adulterated” means varying from the standard of composition or quality prescribed by or pursuant to any statute providing criminal penalties for such variance or set by established commercial usage.
- b. “Commodity” means any material of commerce or agricultural produce that can be bought or sold.
- c. “Credit card” means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person for bearer.
- d. “Mislabeled” means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for such variance or set by established commercial usage.
- e. “Writing” includes printing or any other method or recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.

3-14-2 **Forgery**

3-14-2.1 A person guilty of forgery, a Class 2 Misdemeanor, if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

- a. Alters any writing of another without the authority of the writer;
- b. Makes, completes, executes, authenticates, issues, or transfers any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or
- c. Utters any writing, which he knows to be forged, in a manner specified in subsections 3-14-2.1 (a) or (b).

3-14-3 **Simulation Objects of Antiquity, Rarity, Source, or Authorship**

3-14-3.1 A person is guilty of a Class 2 Misdemeanor if, with purpose to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters, or utters any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess.

3-14-4 **Fraudulent Destruction, Removal, or Concealment of Recordable Instruments**

3-14-4.1 A person is guilty of a Class 2 Misdemeanor if, with purpose to deceive or injure anyone, he destroys, removes, or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording.

3-14-5 **Tampering with Records**

3-14-5.1 A person is guilty of a Class 3 Misdemeanor if, knowing that he has no privilege to do so, he falsifies, destroys, removes, or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing.