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## **TITLE VIII - - CRIMINAL CODE**

**The effective date of Title 8 is July 1, 2023. Resolution No. 2023-R-04.**

### **ARTICLE 1- GENERAL PROVISIONS**

#### **Sec. 8-1-1     Name and Effective Date of Code**

This Title shall be known as the Santa Ana Criminal Code. This Code shall be effective as of the date of its approval by the Santa Ana Tribal Council.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### **Sec. 8-1-2     Application of Code**

The Criminal Code has no application to crimes committed prior to its effective date.

A crime is committed prior to the effective date of the Criminal Code if any of the essential elements of the crime occurred before that date.

Prosecutions for prior crimes shall be governed, prosecuted and punished under the laws existing at the time such crimes were committed.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### **Sec. 8-1-3     Construction of Criminal Code**

In criminal cases where no provision of this Code is applicable, the common law, as recognized by the United States and the Pueblo, shall govern.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### **Sec. 8-1-4     Crimes Defined**

A crime is an act or omission forbidden by this Code and for which, upon conviction, a sentence of either imprisonment or a fine or both is authorized.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-1-5     Classification of Crimes

Crimes are classified as Class 1, Class 2, Class 3, Class 4, Class 5, and Class 6 offenses. Class 1, Class 2, Class 3, and Class 4 offenses are sometimes referred to in this Code “felony offenses.” Any crime identified as a felony but not classified shall be treated as a Class 4 offense for sentencing purposes. Any other crime that is not classified herein, or for which a sentence is not imposed, shall be deemed a Class 6 offense for sentencing purposes.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-1-6     Time Limitations for Commencing Prosecution

No person shall be prosecuted, tried or punished in the Contemporary Court unless the criminal complaint is filed within the time set forth herein:

- A.     For any Class 1 offense, no limitation period shall exist and prosecution for these crimes may commence at any time after the occurrence of the crime;
- B.     For any Class 2 offense, within six years from the time the crime was committed;
- C.     For any Class 3 or Class 4 offense, within five years from the date on which the crime was committed;
- D.     For any Class 5 offense, within two years from the date on which the crime was committed;
- E.     For any Class 6 offense, within one year from the date on which the crime was committed;
- F.     For any crime not contained in the Code or where a limitation is not otherwise provided for, within three years from the date on which the crime was committed.

For purposes of this section, the dismissal of a criminal complaint precludes the filing of a new complaint for the same crime if the new complaint is not filed within the time provided herein.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-1-7     Tolling of Time Limitation for Prosecution for Crimes

The time periods for filing a criminal complaint shall be tolled during any period:

- A.     During which the defendant has concealed himself; or
- B.     During which the fact of the crime was concealed by the defendant.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-1-8     Offenses against Children; Tolling of Statute of Limitations

The applicable time period for commencing prosecution pursuant to Sec. 8-1-7 shall not commence to run for an alleged violation of Section 8-5-1 (abandonment or abuse of a child), 8-9-10 (criminal sexual penetration) or 8-9-12 (criminal sexual contact of minor) until the victim attains the age of eighteen or the violation is reported to a law enforcement agency, whichever occurs first.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-1-9     Double Jeopardy

No person shall be twice put in jeopardy for the same crime. The defense of double jeopardy may not be waived and may be raised by the accused at any stage of a criminal prosecution, whether before or after judgment, or on appeal. When an accused is charged with different crimes or different degrees of the same crime, and following entry of a verdict the accused is granted a new trial, he may not again be tried for a crime or degree of the crime that is greater than the one of which he was originally convicted.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-1-10    Criminal Sentence Permitted Only Upon Conviction

No person charged with any crime shall be sentenced therefor unless he or she has been legally convicted of the crime by the Contemporary Court. No person shall be convicted of a crime unless found guilty by the unanimous verdict of a jury, accepted and recorded by the court; or upon the defendant's confession of guilt or a plea of nolo contendere, accepted and recorded in open court; or after trial to the court without a jury and the finding by the court that such defendant is guilty of the crime with which he or she is charged.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-1-11    Definitions

As used in this Title, the following terms shall have the following meanings:

A.     "Accessory" means one who procures, counsels, aids or abets in the commission of a crime, whether or not such person directly committed the crime and whether or not the principal who directly committed such crime has been prosecuted or convicted, or has been convicted of a different crime or degree of crime, or has been acquitted, or is a child as defined by the Pueblo Children's Code.

B.     "Deadly Weapon" means any firearm, whether loaded or unloaded, or any weapon that is capable of producing death or great bodily harm, including but not restricted to any type of knife with which dangerous cuts can be given, or with which dangerous thrusts can be inflicted, but not including an ordinary pocket knife with a blade less than three inches in length, unless such a knife is used with an intent to cause great bodily harm; and any other

device or thing, whether or not normally used as a weapon, if capable of causing great bodily harm and if used for that purpose.

C. “Great Bodily Harm” means injury to the person that creates or could create a high probability of death; or that causes or could cause serious disfigurement; or that results or could result in permanent or protracted loss or impairment of the function of any member or organ of the body.

D. “Official Proceeding” means a proceeding heard before any legislative, judicial, administrative or other Pueblo agency or official authorized to hear evidence under oath.

E. “Peace Officer” means any official or officer vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes.

F. “Police Officer” means any person commissioned, sworn and vested by the law of the Pueblo or by federal law with the authority and duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes.

G. “Pueblo Employee” means any person receiving remuneration for regular services rendered to the Pueblo or any of its agencies or departments but shall not include independent contractors of the Pueblo or any agency or department thereof.

H. “Pueblo Official” means any appointed official of the Pueblo, whether or not he or she receives remuneration for his or her services.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-1-12 Accessory

A person who is an accessory to a crime may be charged with the crime itself, and if convicted thereof shall be subject to the same penalty as if he/she had been the principal in the commission of the crime.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **ARTICLE 2 - HOMICIDE**

#### Sec. 8-2-1 Murder

A. First Degree Murder. First degree murder is the killing of one human being by another without lawful justification or excuse, by any of the means by which death may be caused:

1. by any kind of willful, deliberate and premeditated killing;
2. in the commission of or attempt to commit any felony offense; or
3. by any act greatly dangerous to the lives of others, indicating a depraved mind regardless of human life.



Whoever commits murder in the first degree is guilty of a Class 1 offense.

B. Second Degree Murder. Unless he or she is acting upon sufficient provocation, upon sudden quarrel or in the heat of passion, a person who kills another human being without lawful justification or excuse commits murder in the second degree if in performing the acts which cause the death he or she knows that such acts create a strong probability of death or great bodily harm to that individual or another.

Murder in the second degree is a lesser included offense of the crime of murder in the first degree.

Whoever commits murder in the second degree is guilty of a Class 2 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-2-2 Manslaughter

Manslaughter is the unlawful killing of a human being without malice.

A. Voluntary manslaughter consists of manslaughter committed upon sufficient provocation evidenced by a sudden quarrel or in the heat of passion.

Whoever commits voluntary manslaughter is guilty of a Class 3 offense.

B. Involuntary manslaughter consists of manslaughter committed in the commission of an unlawful act not amounting to felony offense or in the commission of a lawful act which might produce death in an unlawful manner or without due caution and circumspection.

Whoever commits involuntary manslaughter is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-2-3 Assisting Suicide

Assisting suicide consists of deliberately aiding another in the taking of his own life.

Whoever commits assisting suicide is guilty of a Class 2 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-2-4 Excusable Homicide

Homicide is excusable in the following cases:

A. When committed by accident or misfortune in doing any lawful act, by lawful means, with usual and ordinary caution and without any unlawful intent.

B. When committed by accident or misfortune in the heat of passion upon any sudden and sufficient provocation, or upon a sudden combat, if no undue advantage is taken, nor any dangerous weapon used, and the killing is not done in a cruel or unusual manner.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-2-5 Justifiable Homicide by Pueblo Officer or Pueblo Employee

A. Homicide is justifiable when committed by a Pueblo officer or Pueblo employee or those acting by their command and in their aid and assistance:

1. In obedience to any judgment of a competent court;
2. When necessarily committed in overcoming actual resistance to the execution of some legal process or to the discharge of any other legal duty;
3. When necessarily committed in retaking felony offenders who have been rescued or who have escaped or when necessarily committed in arresting felony offender fleeing from justice; or
4. When necessarily committed in order to prevent the escape of a felony offender from any place of lawful custody or confinement.

B. For the purposes of this section, homicide is necessarily committed when a Pueblo officer or Pueblo employee has probable cause to believe he or another is threatened with serious harm or deadly force while performing those lawful duties described in this section. Whenever feasible, a Pueblo officer or employee should give warning prior to using deadly force.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-2-6 Justifiable Homicide by Citizen

Homicide is justifiable when committed by any person in any of the following cases:

A. when committed in the necessary defense of his or her life, family or property, or in necessarily defending against any unlawful action directed against himself or herself, his or her spouse or family;

B. when committed in the lawful defense of himself, herself or of another and when there is a reasonable ground to believe a design exists to commit a felony offense or to do some great personal injury against such person or another, and there is imminent danger that the design will be accomplished; or

C. when necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony offense committed in his or her presence, or in lawfully suppressing any riot, or in necessarily and lawfully keeping and preserving the peace.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**Sec. 8-2-7      When Homicide is Excusable or Justifiable Defendant to be Acquitted**

Whenever any person is prosecuted for a homicide, and upon his or her trial the killing shall be found to have been excusable or justifiable, the jury shall find such person not guilty and he or she shall be discharged.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**Sec. 8-2-8      Murderer May Not Profit from Wrongdoing; Public Policy**

A.      The acquiring, profiting or anticipating of benefits by reason of the commission of murder where the person committing such crime is convicted of a Class 1 or 2 offense, is against the public policy of this Pueblo and is prohibited.

B.      In all cases involving devises or bequests, or heirships under the laws of descent and distribution, or co-tenancies, or future interest, or community estates, or contracts, whether of real, personal or mixed properties, where a person, who, by committing murder and where such person is convicted of a Class 1 or 2 offense, and might receive some benefit therefrom either directly or indirectly, the common-law maxim to the effect that one cannot take advantage of his own wrong, shall control and be applied to the interpretation, construction and application of all statutes or decisions of the Pueblo in order to deprive and prevent him or her from profiting from such wrongful acts.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**ARTICLE 3 - ASSAULT & BATTERY**

**Sec. 8-3-1      Assault**

Assault consists of either:

- A.      an attempt to commit a battery upon the person of another;
- B.      any unlawful act, threat or menacing conduct which causes another person to reasonably believe that he or she is in danger of receiving an immediate battery; or
- C.      the use of insulting language toward another impugning his or her honor, delicacy or reputation.

Whoever commits assault is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### Sec. 8-3-2 Aggravated Assault

Aggravated assault consists of either:

- A. unlawfully assaulting or striking at another with a deadly weapon;
- B. committing assault by threatening or menacing another while wearing a mask, hood, robe or other covering upon the face, head or body, or while disguised in any manner, so as to conceal identity; or
- C. willfully and intentionally assaulting another with intent to commit any felony offense.

Whoever commits aggravated assault is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### Sec. 8-3-3 Assault with Intent to Commit a Violent Felony Offense

Assault with intent to commit a violent felony offense consists of any person assaulting another with intent to kill or commit any murder, aggravated battery inflicting great bodily harm, criminal sexual penetration in the first, second or third degree, robbery or burglary.

Whoever commits assault with intent to commit a violent felony offense is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### Sec. 8-3-4 Battery

Battery is the unlawful, intentional touching or application of force to the person of another, when done in a rude, insolent or angry manner.

Whoever commits battery is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### Sec. 8-3-5 Aggravated Battery

A. Aggravated battery consists of the unlawful touching or application of force to the person of another with intent to injure that person or another.

B. Whoever commits aggravated battery, inflicting an injury to the person which is not likely to cause death or great bodily harm but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a Class 5 offense.

C. Whoever commits aggravated battery inflicting great bodily harm or does so with a deadly weapon or does so in any manner whereby great bodily harm or death can be inflicted is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-3-6 Reasonable Detention; Assault, Battery, Public Affray or Criminal Damage to Property

A. As used in this section:

1. “licensed premises” means all public and private rooms, facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of establishments licensed to sell or serve alcoholic liquors;

2. “Proprietor” means the owner of the licensed premises or his manager or his designated representative; and

3. “Operator” means the owner or the manager of any establishment or premises open to the public.

B. Any law enforcement officer may arrest without warrant any persons he has probable cause for believing to have committed the crime of assault or battery as defined in Sec. 8-3-1 through 8-3-5 or public affray or criminal damage to property. Any proprietor or operator who causes such an arrest shall not be criminally or civilly liable if he has actual knowledge, communicated truthfully and in good faith to the law enforcement officer, that the persons so arrested have committed the crime of assault or battery as defined in Sec. 8-3-1 through 8-3-5 or public affray or criminal damage to property.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-3-7 Injury to a Pregnant Woman

A. Injury to a pregnant woman consists of a person other than the pregnant woman injuring a pregnant woman in the commission of a felony offense causing her to suffer a miscarriage or stillbirth as a result of that injury.

B. As used in this section:

1. “miscarriage” means the interruption of the normal development of the fetus, other than by a live birth and which is not an induced abortion, resulting in the complete expulsion or extraction from a pregnant woman of a product of human conception; and

2. “stillbirth” means the death of a fetus prior to the complete expulsion or extraction from its mother, irrespective of the duration of pregnancy and which is not an induced abortion; and death is manifested by the fact that after the expulsion or extraction the fetus does not breathe spontaneously or show any other evidence of life such as heartbeat, pulsation of the umbilical cord or definite movement of voluntary muscles.

C. Whoever commits injury to a pregnant woman is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec 8-3-8 Shooting at Dwelling or Occupied Building; Shooting at or from a Motor Vehicle

A. Shooting at a dwelling or occupied building consists of willfully discharging a firearm at a dwelling or occupied building. Whoever commits shooting at a dwelling or occupied building that does not result in great bodily harm to another person is guilty of a Class 4 offense. Whoever commits shooting at a dwelling or occupied building that results in injury to another person is guilty of a Class 3 offense. Whoever commits shooting at a dwelling or occupied building that results in great bodily harm to another person is guilty of a Class 2 offense.

B. Shooting at or from a motor vehicle consists of willfully discharging a firearm at or from a motor vehicle with reckless disregard for the person of another. Whoever commits shooting at or from a motor vehicle that does not result in great bodily harm to another person is guilty of a Class 4 offense. Whoever commits shooting at or from a motor vehicle that results in injury to another person is guilty of a Class 3 offense. Whoever commits shooting at or from a motor vehicle that results in great bodily harm to another person is guilty of a Class 2 offense.

C. This section shall not apply to a law enforcement officer discharging a firearm in the lawful performance of his duties.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec 8-3-8.1 Seizure and Forfeiture of Motor Vehicle

A. A motor vehicle shall be subject to seizure and forfeiture when the vehicle is used or intended for use in the commission of the offense of shooting at or from a motor vehicle.

B. The provisions of Article 44 apply to the seizure, forfeiture and disposal of a motor vehicle subject to forfeiture pursuant to Subsection A of this section

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-3-9 Assault; Battery; School Personnel

A. As used in this section:

1. “in the lawful discharge of his duties” means engaged in the performance of the duties of a school employee; and
2. “school employee” includes a member of a local public school board and public school administrators, teachers and other employees of that board.

B. Assault upon a school employee consists of:

1. an attempt to commit a battery upon the person of a school employee while he is in the lawful discharge of his duties; or
2. any unlawful act, threat or menacing conduct which causes a school employee while he is in the lawful discharge of his duties to reasonably believe that he is in danger of receiving an immediate battery.

Whoever commits assault upon a school employee is guilty of a Class 5 offense.

C. Aggravated assault upon a school employee consists of:

1. unlawfully assaulting or striking at a school employee with a deadly weapon while he is in the lawful discharge of his duties;
2. committing assault by threatening or menacing a school employee who is engaged in the lawful discharge of his duties by a person wearing a mask, hood, robe or other covering upon the face, head or body, or while disguised in any manner so as to conceal identity; or
3. willfully and intentionally assaulting a school employee while he is in the lawful discharge of his duties with intent to commit any felony offense.

Whoever commits aggravated assault upon a school employee is guilty of a Class 3 offense.

D. Assault with intent to commit a violent felony offense upon a school employee consists of any person assaulting a school employee while he is in the lawful discharge of his duties with intent to kill the school employee.

Whoever commits assault with intent to commit a violent felony offense upon a school employee is guilty of a Class 2 offense.

E. Battery upon a school employee is the unlawful, intentional touching or application of force to the person of a school employee while he is in the lawful discharge of his duties, when done in a rude, insolent or angry manner.

Whoever commits battery upon a school employee is guilty of a Class 4 offense.

F. Aggravated battery upon a school employee consists of the unlawful touching or application of force to the person of a school employee with intent to injure that school employee while he is in the lawful discharge of his duties.

Whoever commits aggravated battery upon a school employee, inflicting an injury to the school employee which is not likely to cause death or great bodily harm but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a Class 4 offense.

Whoever commits aggravated battery upon a school employee, inflicting great bodily harm, or does so with a deadly weapon or in any manner whereby great bodily harm or death can be inflicted, is guilty of a Class 3 offense.

G. Every person who assists or is assisted by one or more other persons to commit a battery upon any school employee while he is in the lawful discharge of his duties is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-3-9.1 Assault; Battery; Sports Officials

A. As used in this section:

1. “in the lawful discharge of his duties” means engaged in the performance of the duties of a sports official;
2. “sports official” means a person who:

- a. serves as a referee, umpire linesman, timer or scorer, or who serves in a similar capacity, while working, supervising or administering a sports event; and
- b. is registered as a member of a local, state, regional or national organization that is engaged in providing education and training to sports officials.

B. Assault upon a sports official consists of:

1. an attempt to commit a battery upon the person of a sports official while he is in the lawful discharge of his duties; or
2. any unlawful act, threat or menacing conduct that causes a sports official while he is in the lawful discharge of his duties to reasonably believe that he is in danger of receiving an immediate battery.

C. Whoever commits assault upon a sports official is guilty of a Class 5 offense.

D. Aggravated assault upon a sports official consists of unlawfully assaulting or striking at a sports official with a deadly weapon while he is in the lawful discharge of his duties.

E. Whoever commits aggravated assault upon a sports official is guilty of a Class 3 offense.

F. Battery upon a sports official is the unlawful, intentional touching or application of force to the person of a sports official while he is in the lawful discharge of his duties, when done in a rude, insolent or angry manner.

G. Whoever commits battery upon a sports official is guilty of a Class 5 offense.



H. Aggravated battery upon a sports official consists of the unlawful touching or application of force to the person of a sports official with intent to injure that sports official while he is in the lawful discharge of his duties.

I. Whoever commits aggravated battery upon a sports official, inflicting an injury to the sports official that is not likely to cause death or great bodily harm, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a Class 4 offense.

J. Whoever commits aggravated battery upon a sports official, inflicting great bodily harm, or does so with a deadly weapon or in any manner whereby great bodily harm or death can be inflicted, is guilty of Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec 8-3-9.2 Assault; Battery; Health Care Personnel

A. As used in this section:

1. “health care worker” means an employee of a health facility or a licensed emergency medical technician;
2. “health facility” means a public or private hospital, outpatient facility, diagnostic and treatment center, rehabilitation center or infirmary. “Health facility” also includes those facilities that, by federal regulation, must be licensed by the state to obtain or maintain full or partial, permanent or temporary federal funding, but “health facility” does not include a skilled nursing facility, a nursing facility or other long-term residential care facility; and
3. “in the lawful discharge of the health care worker’s duties” means engaged in the performance of the duties of a health care worker.

B. Assault upon a health care worker consists of:

1. an attempt to commit a battery upon the person of a health care worker who is in the lawful discharge of the health care worker’s duties; or
2. any unlawful act, threat or menacing conduct that causes a health care worker who is in the lawful discharge of the health care worker’s duties to reasonably believe that the health care worker is in danger of receiving an immediate battery.

Whoever commits assault upon a health care worker is guilty of a Class 5 offense.

C. Aggravated assault upon a health care worker consists of:

1. unlawfully assaulting or striking at a health care worker with a weapon while the health care worker is in the lawful discharge of the health care worker’s duties; or
2. willfully and intentionally assaulting a health care worker who is in the lawful discharge of the health care worker’s duties with intent to commit any felony.

Whoever commits aggravated assault upon a health care worker is guilty of a Class 3 offense.

D. Assault with intent to commit kill a health care worker consists of assaulting a health care worker who is in the lawful discharge of the health care worker's duties with intent to kill the health care worker.

Whoever commits assault with intent to kill a health care worker is guilty of a Class 2 offense.

E. Battery upon a health care worker is the unlawful, intentional touching or application of force to the person of a health care worker who is in the lawful discharge of the health care worker's duties, when done in a rude, insolent or angry manner.

Whoever commits battery upon a health care worker is guilty of a Class 4 offense.

F. Aggravated battery upon a health care worker consists of the unlawful touching or application of force to the person of a health care worker with intent to injure that health care worker while the health care worker is in the lawful discharge of the health care worker's duties.

Whoever commits aggravated battery upon a health care worker, inflicting an injury to the health care worker that is not likely to cause death or great bodily harm but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a Class 4 offense.

Whoever commits aggravated battery upon a health care worker, inflicting great bodily harm or does so with a deadly weapon or in any manner whereby great bodily harm or death can be inflicted, is guilty of a Class 3 offense.

G. A person who assists or is assisted by one or more other persons to commit a battery upon a health care worker who is in the lawful discharge of the health care worker's duties is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec 8-3-10 Crimes against a Household Member; Definitions

A. As used in Sections 8-3-11 through 8-3-16:

1. "household member" means a spouse, former spouse, parent, present or former stepparent, present or former parent in-law, grandparent, grandparent-in-law, a co-parent of a child, or a person with whom a person has had a continuing personal relationship; and

2. "continuing personal relationship" means a dating or intimate relationship.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-3-11 Assault against a Household Member; Aggravated Assault against a Household Member

A. Assault against a household member consists of:

1. an attempt to commit a battery against a household member; or
2. any unlawful act, threat or menacing conduct that causes a household member to reasonably believe that he is in danger of receiving an immediate battery.

Whoever commits assault against a household member is guilty of a Class 6 offense.

B. Aggravated assault against a household member consists of:

1. unlawfully assaulting or striking at a household member with a deadly weapon; or
2. willfully and intentionally assaulting a household member with intent to commit any felony offense.

Whoever commits aggravated assault against a household member is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-3-12 Assault against a Household Member with Intent to Commit a Violent Felony Offense

A. Assault against a household member with intent to commit a violent felony offense consists of any person assaulting a household member with intent to kill or commit any murder, aggravated battery inflicting great bodily harm, criminal sexual penetration in the first, second or third degree, robbery, kidnapping, false imprisonment or burglary.

B. Whoever commits assault against a household member with intent to commit a violent felony offense is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-3-13 Battery against a Household Member

A. Battery against a household member consists of the unlawful, intentional touching or application of force to the person of a household member, when done in a rude, insolent or angry manner.

B. Whoever commits battery against a household member is guilty of a Class 5 offense.

C. Upon conviction pursuant to this section, an offender shall be required to participate in and complete a domestic violence offender treatment or intervention program

approved by the Pueblo of Santa Ana Department of Social Services pursuant to rules promulgated by the department that define the criteria for such programs.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**Sec. 8-3-14    Aggravated Battery against a Household Member**

A.     Aggravated battery against a household member consists of the unlawful touching or application of force to the person of a household member with intent to injure that person or another.

B.     Whoever commits aggravated battery against a household member by inflicting an injury to that person that is not likely to cause death or great bodily harm, but that does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a Class 4 offense.

C.     Whoever commits aggravated battery against a household member by inflicting great bodily harm or doing so with a deadly weapon or doing so in any manner whereby great bodily harm or death can be inflicted is guilty of a Class 2 offense.

D.     Upon conviction pursuant to Subsection B of this section, an offender shall be required to participate in and complete a domestic violence offender treatment or intervention program approved by the Pueblo of Santa Ana Department of Social Services pursuant to rules promulgated by the department that define the criteria for such programs.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**Sec. 8-3-15    Multiple Convictions of Battery or Aggravated Battery**

A.     Whoever commits three offenses of battery against a household member as provided in Sec. 8-3-13 or aggravated battery against a household member as provided in Subsection B of Sec. 8-3-14, or any combination thereof, when the household member is a spouse, a former spouse, a co-parent of a child or a person with whom the offender has had a continuing personal relationship, is guilty of a Class 4 offense.

B.     Whoever commits four or more offenses of battery against a household member as provided in Sec. 8-3-13 or aggravated battery against a household member as provided in Subsection B of Sec. 8-3-14, or any combination thereof, when the household member is a spouse, a former spouse, a co-parent of a child or a person with whom the offender has had a continuing personal relationship is guilty of a Class 3 offense.

C.     For the purpose of determining the number of offenses committed, each offense must have been committed after conviction for the preceding offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-3-16 Criminal Damage to Property of Household Member; Deprivation of Property of Household Member

A. Criminal damage to the property of a household member consists of intentionally damaging real, personal, separate, or community or jointly owned property of a household member with the intent to intimidate, threaten or harass that household member.

B. Whoever commits criminal damage to the property of a household member is guilty of a Class 5 offense, except that when the damage to the household member's interest in the property amounts to more than one thousand dollars (\$1,000), the offender is guilty of a Class 4 offense.

C. Deprivation of the property of a household member consists of intentionally depriving a household member of the use of separate, community or jointly owned personal property of the household member with the intent to intimidate or threaten that household member.

D. Whoever commits deprivation of the property of a household member is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**ARTICLE 3A – HARASSMENT AND STALKING**

Sec. 8-3A-1 Harassment; Penalties

A. Harassment consists of knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress.

B. Whoever commits harassment is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-3A-2 Stalking; Penalties

A. As used in this section:

1. “lawful authority” means within the scope of lawful employment or constitutionally protected activity; and
2. “pattern of conduct” means two or more acts, on more than one occasion, in which the alleged stalker by any action, method, device or means, directly, indirectly or through third parties, follows, monitors, surveils, threatens or communicates to or about a person.

B. Stalking consists of knowingly pursuing a pattern of conduct, without lawful authority, directed at a specific individual when the person intends that the pattern of conduct

would place the individual in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint of the individual or another individual.

C. Whoever commits stalking is guilty of a Class 5 offense. Upon a second or subsequent conviction, the offender is guilty of a Class 4 offense.

D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted of stalking to participate in and complete a program of professional counseling at the person's own expense or a domestic violence offender treatment or intervention program.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-3A-3 Aggravated Stalking; Penalties

A. Aggravated stalking consists of stalking perpetrated by a person:

1. who knowingly violates a permanent or temporary order of protection issued by a court, except that mutual violations of such orders may constitute a defense to aggravated stalking;
2. in violation of a court order setting conditions of release and bond;
3. when the person is in possession of a deadly weapon; or
4. when the victim is less than sixteen years of age.

B. Whoever commits aggravated stalking is guilty of a Class 4 offense. Upon a second or subsequent conviction, the offender is guilty of a Class 3 offense. If a second or subsequent offense involves the violation of a protection order arising from intimate partner violence or dating violence, then the offender shall be sentenced to a term of imprisonment of not less than seventy-two (72) consecutive hours that shall not be suspended, deferred, or taken under advisement.

C. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted of aggravated stalking to participate in and complete a program of professional counseling at his own expense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-3A-4 Exceptions

The following do not constitute harassment or stalking:

- A. picketing or public demonstrations that are lawful or that arise out of a bona fide labor dispute; or
- B. a peace officer in the lawful performance of his duties.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 4 - KIDNAPPING**

### **Sec. 8-4-1     Kidnapping**

A.     Kidnapping is the unlawful taking, restraining, transporting or confining of a person, by force, intimidation or deception, with intent:

1.     that the victim be held for ransom;
2.     that the victim be held as a hostage or shield and confined against his or her will;
3.     that the victim be held to service against the victim's will; or
4.     to inflict death, physical injury or a sexual offense on the victim.

B.     Whoever commits kidnapping is guilty of a Class 2 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **Sec. 8-4-2     Criminal Use of Ransom**

Criminal use of ransom consists of knowingly receiving, possessing, concealing or disposing of any portion of money or other property which has at any time been delivered for the ransom of a kidnapped person.

Whoever commits criminal use of ransom is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **Sec. 8-4-3     False Imprisonment**

False imprisonment consists of intentionally confining or restraining another person without that person's consent and with knowledge that he or she has no lawful authority to do so.

Whoever commits false imprisonment is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **Sec. 8-4-4     Custodial Interference; Penalties**

A.     As used in this section:

1.     “child” means an individual who has not reached his eighteenth birthday;
2.     “custody determination” means a judgment or order of a court of competent jurisdiction providing for the custody of a child, including visitation rights;
3.     “person” means any individual or legal entity;
4.     “physical custody” means actual possession and control of a child; and

5. “right to custody” means the right to physical custody or visitation of a child arising from:

- a. a parent-child relationship between the child and a natural or adoptive parent absent a custody determination; or
- b. a custody determination.

B. Custodial interference consists of any person, having a right to custody of a child, maliciously taking, detaining, concealing or enticing away or failing to return that child without good cause and with the intent to deprive permanently or for a protracted time another person also having a right to custody of that child of his right to custody.

C. Unlawful interference with custody consists of any person, not having a right to custody, maliciously taking, detaining, concealing or enticing away or failing to return any child with the intent to detain or conceal permanently or for a protracted time that child from any person having a right to custody of that child.

D. Whoever commits custodial interference or unlawful interference with custody is guilty of a Class 4 offense.

E. A peace officer investigating a report of a violation of this section may take a child into protective custody if it reasonably appears to the officer that any person will flee with the child in violation of Subsection B or C of this section. The child shall be placed with the person whose right to custody of the child is being enforced, if available and appropriate, and, if not, in the custody of care of Pueblo of Santa Ana Department of Social Services.

F. Upon recovery of a child, a hearing by the Contemporary Court shall be expeditiously held to determine continued custody.

G. A charge brought under this section may be dismissed if the person voluntarily returns the child within fourteen days after taking, detaining or failing to return the child in violation of this section.

H. The offenses enumerated in this section are continuous in nature and continue for so long as the child is concealed or detained.

I. Any defendant convicted of violating the provisions of this section may be assessed the following expenses and costs by the court, with payments to be assigned to the respective person or agency:

- 1. any expenses and costs reasonably incurred by the person having a right to custody of the child in seeking return of that child; and
- 2. any expenses and costs reasonably incurred for the care of the child while in the custody of the Santa Ana Social Services.



J. Violation of the provisions of this section is punishable in Santa Ana Pueblo, whether the intent to commit the offense is formed within or outside the jurisdiction of the Pueblo, if the child was within the jurisdiction of the Pueblo at the time of the taking.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 5 - CRIMES AGAINST CHILDREN AND DEPENDENTS**

### **Sec. 8-5-1     Abandonment or Abuse of a Child**

A. As used in this section:

1. “child” means a person who is less than eighteen years of age;
2. “neglect” means that a child is without proper parental care and control of subsistence, education, medical or other care or control necessary for the child’s well-being because of the faults or habits of the child’s parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; and
3. “negligently” refers to criminal negligence and means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child.

B. Abandonment of a child consists of the parent, guardian or custodian of a child intentionally leaving or abandoning the child under circumstances whereby the child may or does suffer neglect. A person who commits abandonment of a child is guilty of a Class 5 offense, unless the abandonment results in the child’s death or great bodily harm, in which case the person is guilty of a Class 2 offense.

C. Abuse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be:

1. placed in a situation that may endanger the child’s life or health;
2. tortured, cruelly confined or cruelly punished; or
3. exposed to the inclemency of the weather.

D. A person who commits abuse of a child that does not result in the child’s death or great bodily harm is, for a first offense, guilty of a Class 3 offense and for second and subsequent offenses is guilty of a Class 2 offense. If the abuse results in great bodily harm to the child, the person is guilty of a Class 1 offense.

E. A person who commits negligent abuse or intentional abuse of a child that results in the death of the child is guilty of a Class 1 offense.

F. Evidence that demonstrates that a child has been knowingly, intentionally or negligently allowed to enter or remain in a motor vehicle, building or any other premises that contains chemicals and equipment used or intended for use in the manufacture of a controlled substance shall be deemed prima facie evidence of abuse of the child.

H. Evidence that demonstrates that a child has been knowingly and intentionally exposed to the use of methamphetamine shall be deemed prima facie evidence of abuse of the child.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-5-2 Abandonment of Dependent

Abandonment of dependent consists of a person having the ability and means to provide for his or her spouse or minor child's support and abandoning or failing to provide for the support of such dependent.

Whoever commits abandonment of dependent is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-5-3 Contributing to Delinquency of Minor

Contributing to the delinquency of a minor consists of any person committing any act or omitting the performance of any duty, which act or omission causes or tends to cause or encourage the delinquency of any person under the age of eighteen years.

Whoever commits contributing to the delinquency of a minor is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-5-4 Obstruction of Reporting or Investigation of Child Abuse or Neglect

Obstruction of reporting or investigation of child abuse or neglect consists of:

A. knowingly inhibiting, preventing, obstructing or intimidating another from reporting child abuse or neglect including child sexual abuse; or

B. Knowingly obstructing, delaying, interfering with or denying access to a law enforcement officer or child protective services social worker in the investigation of a report of child abuse or sexual abuse.

Whoever commits obstruction of reporting or investigation of child abuse or neglect is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 6 – SEXUAL EXPLOITATION OF CHILDREN**

### **Sec. 8-6-1     Sexual Exploitation of Children Act**

Article 6 may be cited as the “Sexual Exploitation of Children Act.”

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **Sec. 8-6-2     Definitions**

As used in the Sexual Exploitation of Children Act:

**A.     “prohibited sexual act” means:**

1.     sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex;
2.     bestiality;
3.     masturbation;
4.     sadomasochistic abuse for the purpose of sexual stimulation; or
5.     lewd and sexually explicit exhibition with a focus on the genitals or pubic area of any person for the purpose of sexual stimulation;

**B.     “visual or print medium” means:**

1.     any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer or electronically generated imagery; or
2.     any book, magazine or other form of publication or photographic reproduction containing or incorporating any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer generated or electronically generated imagery;

**C.     “performed publicly” means performed in a place that is open to or used by the public;**

**D.     “manufacture” means the production, processing, copying by any means, printing, packaging or repackaging of any visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age; and**

**E.     “obscene” means any material, when the content if taken as a whole, that:**

1.     appeals to a prurient interest in sex, as determined by the average person applying contemporary community standards;
2.     portrays a prohibited sexual act in a patently offensive way; and
3.     lacks serious literary, artistic, political or scientific value.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-6-3     Sexual Exploitation of Children

A.     It is unlawful for a person to intentionally possess any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a Class 4 offense for sexual exploitation of children. When a separate finding of fact made by a court or jury shows beyond a reasonable doubt that a child depicted in the visual or print medium is a child under the age of thirteen, the sentence imposed by this subsection shall not be suspended or deferred.

B.     The provisions of Subsection A of this section shall not apply to a depiction possessed by a child under the age of eighteen in which the depicted child is between the ages of fourteen and eighteen and the depicted child knowingly and voluntarily consented to the possession, and:

1.     the depicted child knowingly and voluntarily consented to the creation of the depiction; or
2.     the depicted child knowingly and voluntarily produced the depiction without coercion.

This subsection shall not prohibit prosecution nor create an immunity from prosecution for the possession of depictions that are the result of coercion.

C.     It is unlawful for a person to intentionally distribute any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a Class 3 offense.

D.     It is unlawful for a person to intentionally cause or permit a child under eighteen years of age to engage in any prohibited sexual act or simulation of such an act if that person knows, has reason to know or intends that the act may be recorded in any obscene visual or print medium or performed publicly. A person who violates the provisions of this subsection is guilty of a Class 3 offense.

E.     It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a Class 4 offense.

F.     It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts a prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child under eighteen years of

age, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this subsection is guilty of a Class 4 offense.

G. It is unlawful for a person to intentionally distribute any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts a prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child under eighteen years of age, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this subsection is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### **Sec. 8-6-4      Sexual Exploitation of Children by Prostitution**

A. Any person knowingly receiving any pecuniary profit as a result of a child under the age of sixteen engaging in a prohibited sexual act with another is guilty of a Class 2 offense, unless the child is under the age of thirteen, in which event the person is guilty of a Class 1 offense.

B. Any person knowingly hiring or offering to hire a child under the age of sixteen to engage in any prohibited sexual act is guilty of a Class 2 offense.

C. Any parent, legal guardian or person having custody or control of a child under sixteen years of age who knowingly permits that child to engage in or to assist any other person to engage in any prohibited sexual act or simulation of such an act for the purpose of producing any visual or print medium depicting such an act is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **ARTICLE 7 – WEAPONS AND EXPLOSIVES**

#### **Sec. 8-7-1      Carrying a Deadly Weapon**

“Carrying a deadly weapon” means being armed with a deadly weapon by having it on the person, or in close proximity thereto, so that the weapon is readily accessible for use.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### **Sec. 8-7-2      Unlawful Carrying of a Deadly Weapon**

A. Unlawful carrying of a deadly weapon consists of carrying a concealed loaded firearm or any other type of deadly weapon anywhere, except in the following cases:

1. in the person’s residence or on real property belonging to him as owner, lessee, tenant or licensee;
2. in a private automobile or other private means of conveyance, for lawful protection of the person’s or another’s person or property;

agency;  
3. by a peace officer in accordance with the policies of his law enforcement agency;  
4. by a citizen granted a concealed carry permit by the Governor or Tribal Council.

B. Nothing in this section shall be construed to prevent the carrying of any unloaded firearm.

C. Whoever commits unlawful carrying of a deadly weapon is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-7-2.1 Unlawful Carrying of a Deadly Weapon on School Premises

A. Unlawful carrying of a deadly weapon on school premises consists of carrying a deadly weapon on school premises except by:

1. a peace officer;
2. school security personnel;
3. a student, instructor or other school-authorized personnel engaged in army, navy, marine corps or air force reserve officer training corps programs or state- or Pueblo-authorized hunter safety training instruction;
4. a person older than nineteen years of age on school premises in a private automobile or other private means of conveyance, for lawful protection of the person's or another's person or property.

B. As used in this section, "school premises" means:

1. the buildings and grounds, including playgrounds, playing fields and parking areas and any school bus of any public elementary, secondary, junior high or high school in or on which school or school-related activities are being operated under the supervision of a local school board; or
2. any other public buildings or grounds, including playing fields and parking areas that are not public school property, in or on which public school-related and sanctioned activities are being performed.

C. Whoever commits unlawful carrying of a deadly weapon on school premises is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-7-2.2 Unlawful Possession of a Handgun by a Person; Exceptions; Penalty

A. As used in this section:

1. "person" means an individual who is less than nineteen years old; and

2. “handgun” means a loaded or unloaded pistol, revolver or firearm which will or is designed to or may readily be converted to expel a projectile by the action of an explosion and the barrel length of which, not including a revolving, detachable or magazine breech, does not exceed twelve inches.

B. Unlawful possession of a handgun by a person consists of a person knowingly having a handgun in his possession or knowingly transporting a handgun, except when the person is:

1. in attendance at a hunter’s safety course or a handgun safety course;
2. engaging in the use of a handgun for target shooting at an established range authorized by the Pueblo or in an area where the discharge of a handgun without legal justification is not prohibited by law;
3. engaging in an organized competition involving the use of a handgun;
4. legal hunting or trapping activities;
5. traveling, with an unloaded handgun in his possession, to or from an activity described in Paragraph (1), (2), (3) or (4) of this subsection; or
6. on real property under the control of the person’s parent, grandparent or legal guardian, and the person is being supervised by his parent, grandparent or legal guardian.

C. A person who commits unlawful possession of a handgun by a person is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**Sec. 8-7-2.3 Seizure and Forfeiture of a Handgun Possessed or Transported by a Person in Violation of Unlawful Possession of a Handgun by a Person**

A. A handgun is subject to seizure and forfeiture by a law enforcement agency when the handgun is possessed or transported by a person in violation of the offense of unlawful possession of a handgun by a person.

B. The provisions of Article 44 apply to the seizure, forfeiture and disposal of a handgun subject to forfeiture pursuant to Subsection A of this section.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**Sec. 8-7-3 Unlawful Carrying of a Firearm in Licensed Liquor Establishments**

A. Unlawful carrying of a firearm in an establishment licensed to dispense alcoholic beverages consists of carrying a loaded or unloaded firearm on any premises licensed by the Pueblo for the dispensing of alcoholic beverages except:

1. by a law enforcement officer in the lawful discharge of the officer’s duties;

2. by the owner, lessee, tenant or operator of the licensed premises or the owner's, lessee's, tenant's or operator's agents, including privately employed security personnel during the performance of their duties;

B. Whomever commits unlawful carrying of a firearm in an establishment licensed to dispense alcoholic beverages is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-7-4 Negligent Use of a Deadly Weapon

A. Negligent use of a deadly weapon consists of:

1. discharging a firearm into any building or vehicle or so as to knowingly endanger a person or his property;
2. carrying a firearm while under the influence of an intoxicant or narcotic;
3. endangering the safety of another by handling or using a firearm or other deadly weapon in a negligent manner; or
4. discharging a firearm within one hundred fifty yards of a dwelling or building, not including abandoned or vacated buildings on public lands during hunting seasons, without the permission of the owner or lessees thereof.

B. The provisions of Paragraphs (1), (3) and (4) of subsection A of this Section shall not apply to a peace officer or other Pueblo employee who is required or authorized by law to carry or use a firearm in the course of his employment and who carries, handles, uses or discharges a firearm while lawfully engaged in carrying out the duties of his office or employment.

C. The exceptions from criminal liability provided for in Subsection B of this section shall not preclude or affect civil liability for the same conduct.

Whoever commits negligent use of a deadly weapon is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-7-5 Dangerous Use of Explosives

Dangerous use of explosives consists of maliciously exploding, attempting to explode or placing any explosive or explosive device with the intent to injure, intimidate or terrify another, or to damage another's property.

Whoever commits dangerous use of explosives is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-7-6 Negligent Use of Explosives



Negligent use of explosives consists of negligently exploding, attempting to explode or placing any explosive or explosive device in such a manner as to result in injury to another or to property of another, or in the probability of such injury.

Whoever commits negligent use of explosives is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-7-7     Unlawful Sale, Possession or Transportation of Explosives

Unlawful sale, possession or transportation of explosives consists of:

A. knowingly selling or possessing any explosive or causing such explosive to be transported without having plainly marked in large letters in a conspicuous place on the box or package containing such explosive the name and explosive character thereof and the date of manufacture. For the purpose of this subsection, the term “explosive” shall not include:

1. explosive materials in medicine and medicinal agents in the forms prescribed by the official United States pharmacopoeia or the national formulary;
2. small arms ammunition and components thereof;
3. commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches and friction primers intended to be used solely for sporting, recreational or cultural purposes as defined in Section 921(a)(4)(c) of Title 18 of the United States Code, or in antique devices as exempted from the term “destructive device” in Section 921 (a)(4) of Title 18 of the United States Code; or
4. explosive materials transported in compliance with the regulations of the United States department of transportation and agencies thereof; or

B. knowingly transporting or taking any explosive upon or into any vehicle belonging to a common carrier transporting passengers. For the purpose of this subsection, the term “explosives” shall not include:

1. explosive materials in medicines and medicinal agents in the forms prescribed by the official United States pharmacopoeia or the national formulary;
2. small arms ammunition or components thereof; or
3. explosive materials transported in compliance with the regulations of the United States department of transportation and agencies thereof.

Whoever commits unlawful sale, possession or transportation of explosives as set forth in Subsection A of this section is guilty of a Class 6 offense.

Whoever commits unlawful transportation of explosives as set forth in Subsection B of this section is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-7-7.1 Unlawful Sale of a Firearm without a Background Check

A. Unlawful sale of a firearm without a background check consists of the sale of a firearm without conducting a federal instant background check, subject to the following:

(1) if the buyer of a firearm is not a natural person, then each natural person who is authorized by the buyer to possess the firearm after the sale shall undergo a federal instant background check before taking possession of the firearm;

(2) a prospective firearm seller who does not hold a current and valid federal firearms license issued pursuant to 18 U.S.C. Section 923(a) shall arrange for a person who does hold that license to conduct the federal instant background check. A federal firearms licensee shall not unreasonably refuse to perform a background check pursuant to this paragraph; and

(3) a person who holds a current and valid federal firearms license issued pursuant to 18 U.S.C. Section 923(a) may charge a fee not to exceed thirty-five dollars (\$35.00) for conducting a background check pursuant to this section.

B. The provisions of Subsection A of this section do not apply to the sale of a firearm:

(1) by or to a person who holds a current and valid federal firearms license issued pursuant to 18 U.S.C. Section 923(a);

(2) to a law enforcement agency;

(3) between two law enforcement officers authorized to carry a firearm and certified pursuant to federal law or the New Mexico Law Enforcement Training Act (NMSA 29-7-1, et seq.); or

(4) between immediate family members.

C. As used in this section:

(1) “consideration” means anything of value exchanged between the parties to a sale;

(2) “federal instant background check” means a background check that meets the requirements of 18 U.S.C. Section 922(t) and that does not indicate that a sale to the person receiving the firearm would violate 18 U.S.C. Section 922(g) or 18 U.S.C. Section 922(n) or state law;

(3) “firearm” means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer; and includes any handgun, rifle or shotgun; but shall not include an antique firearm as defined in 18 U.S.C. Section 921(a)(16), a powder-

actuated tool or other device designed to be used for construction purposes, an emergency flare or a firearm in permanently inoperable condition;

(4) “immediate family member” means a spouse, parent, child, sibling, grandparent, grandchild, great-grandchild, niece, nephew, first cousin, aunt or uncle; and

(5) “sale” means the delivery or passing of ownership, possession or control of a firearm for a fee or other consideration, but does not include temporary possession or control of a firearm provided to a customer by the proprietor of a licensed business in the conduct of that business.

D. Each party to an unlawful sale in violation of this section may be separately charged for the same sale.

E. Each firearm sold contrary to the provisions of this section constitutes a separate offense under Subsection A of this section.

F. Two or more offenses may be charged in the same complaint, information or indictment and shall be punished as separate offenses.

G. Whoever violates the provisions of this section is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-7-8 Unlawful Possession of Switchblades

Unlawful possession of switchblades consists of any person, either manufacturing, causing to be manufactured, possessing, displaying, offering, selling, lending, giving away or purchasing any knife which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by any outward or centrifugal thrust or movement.

Whoever commits unlawful possession of switchblades is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-7-9 Firearms or Destructive Devices; Receipt, Transportation or Possession by Certain Persons; Penalty

A. It is unlawful for the following persons to receive, transport or possess a firearm or destructive device on Pueblo Lands:

1. a felon;
2. a person subject to a lawful order of protection; or
3. a person convicted of any of the following crimes:
  - a. battery against a household member under this Code;

- b. criminal damage to property of a household member under this Code;
- c. a first offense of stalking under this Code; or
- d. a crime listed in 18 U.S.C. 922.

B. A felon found in possession of a firearm shall be guilty of a Class 4 Offense, provided that the violation of and the sentence imposed pursuant to this subsection shall be increased to a violation of and the sentence for a Class 3 Offense if the person has previously been convicted of a serious violent offense.

C. Any person subject to a lawful order of protection or convicted of a crime listed in Paragraph (3) of Subsection A of this section who receives, transports or possesses a firearm or destructive device is guilty of a Class 5 Offense.

D. As used in this section:

1. except as provided in Paragraph (2) of this subsection, “destructive device” means:

a. any explosive, incendiary or poison gas: 1) bomb; 2) grenade; 3) rocket having a propellant charge of more than four ounces; 4) missile having an explosive or incendiary charge of more than one-fourth ounce; 5) mine; or 6) similar device.

b. any type of weapon by whatever name known that will, or that may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell that is generally recognized as particularly suitable for sporting purposes; or

c. any combination of parts either designed or intended for use in converting any device into a destructive device as defined in this paragraph and from which a destructive device may be readily assembled;

2. the term “destructive device” does not include any device that is neither designed nor redesigned for use as a weapon or any device, although originally designed for use as a weapon, that is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device;

3. “felon” means a person convicted of a felony offense by a court of the United States or of any state or political subdivision thereof or a person convicted by a tribal court of an offense that would have been a felony offense, had the person been convicted by a state or federal court, and:

a. less than ten years have passed since the person completed serving a sentence or period of probation for the felony conviction, whichever is later;

b. the person has not been pardoned for the felony conviction by the proper authority; and

c. the person has not received a deferred sentence; and

4. “firearm” means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion or the frame or receiver of any such weapon.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-7-10 Definitions

The following definitions are applicable to Sections 8-7-11 through 8-7-15:

A. “explosive” means any chemical compound or mixture or device, the primary or common purpose of which is to explode and includes but is not limited to dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters; and

B. “explosive device” or “incendiary device” means:

(1) any explosive bomb, grenade, missile or similar device;

(2) any device or mechanism used or created to start a fire or explosion with or without a timing mechanism except cigarette lighters and matches; or

(3) any incendiary bomb or grenade, firebomb or similar device or any device which includes a flammable liquid or compound and a wick or igniting agent composed of any material which is capable of igniting the flammable liquid or compound.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-7-11 Possession of Explosives

A. Possession of explosives consists of knowingly possessing, manufacturing or transporting any explosive and either intending to use the explosive in the commission of any felony offense or knowing or reasonably believing that another intends to use the explosive to commit any felony offense.

B. Any person who commits possession of explosives guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-7-12 Possession of Explosive Device or Incendiary Device

A. Possession of an explosive device or incendiary device consists of knowingly possessing, manufacturing or transporting any explosive device or incendiary device or complete combination of parts thereof necessary to make an explosive device or incendiary device. This subsection shall not apply to any fireworks or any lawfully acquired household, commercial, industrial or sporting device or compound.

B. Any person who commits possession of an explosive device or incendiary device is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**Sec. 8-7-13 Facsimile or Hoax Bomb or Explosive**

Any person who intentionally gives, mails, sends or causes to be sent any false or facsimile bomb or explosive to another person or places or causes to be placed at any location any false or facsimile bomb or explosive, with the intent that any other person thinks it is a real bomb or explosive, is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**Sec. 8-7-14 False Report**

A. False report consists of knowingly conveying or causing to be conveyed to any police agency or fire department a false report concerning a fire or explosion or the placement of any explosives or explosive or incendiary device or any other destructive substance and includes, but is not limited to, setting off a fire alarm, and a false report of an active shooter.

B. Any person who commits false report which causes death or great bodily harm to another is guilty of a Class 4 offense, but if such death or great bodily harm is not caused, the person is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**Sec. 8-7-15 Interference with Bomb or Fire Control**

A. Interference with bomb or fire control consists of:

1. intentionally interfering with the proper functioning of a fire alarm system;
2. intentionally interfering with the lawful efforts of a firefighter or police officer to control or extinguish a fire or to secure the safety of any object reasonably believed to be a bomb, explosive or incendiary device; or
3. intentionally interfering with the lawful efforts of a firefighter or police officer to preserve for investigation or investigate the scene of a fire or explosion to determine its cause.

B. Any person who commits interference with bomb or fire control is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 8 – NUISANCES**

### **Sec. 8-8-1     Public Nuisance**

A public nuisance consists of knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either:

- A.     injurious to public health, safety, morals or welfare; or
- B.     interferes with the exercise and enjoyment of public rights.

Whoever commits a public nuisance for which the act or penalty is not otherwise prescribed by law is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **Sec. 8-8-2     Polluting Water**

Polluting water consists of knowingly and unlawfully introducing any object or substance into any body of water causing it to be offensive or dangerous for human or animal consumption or use. Polluting water constitutes a public nuisance.

For the purpose of this section, “body of water” means any river or its tributary, stream, lake, pond, reservoir, acequia, canal, ditch, spring, well or declared or known ground waters.

Whoever commits polluting water for which the act or penalty is not otherwise prescribed by law is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **Sec. 8-8-3     Refuse Defined**

Refuse means any article or substance:

- A.     which is commonly discarded as waste; or
- B.     which, if discarded on the ground, will create or contribute to an unsanitary, offensive or unsightly condition.

Refuse includes, but is not limited to, the following items or classes of items: waste food; wastepaper and paper products; cans, bottles or other containers; junked household furnishings and equipment; junked parts or bodies of automobiles and other metallic junk or scrap; portions or carcasses of dead animals; and collections of ashes, dirt, yard trimmings or other rubbish.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec 8-8-4. Littering

A. Littering consists of discarding refuse in any manner other than by placing the refuse in a receptacle provided or an area designated for the purpose or otherwise in accordance with lawful direction.

B. Whoever commits littering is guilty of a Class 6 offense.

C. Any jail sentence imposed pursuant to Subsection B of this section may be suspended, in the discretion of the judge, upon conditions that the offender assist in litter clean-up on Pueblo Lands for a period not to exceed the length of the suspended sentence.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-8-5 Abandonment of Dangerous Containers

Abandonment of dangerous containers consists of any person:

A. abandoning, discarding or keeping in any place accessible to children, any refrigerator, icebox, freezer, airtight container, cabinet or similar container, of a capacity of one and one-half cubic feet or more, which is no longer in use, without having the attached doors, hinges, lids or latches removed or without sealing the doors or other entrances so as to make it impossible for anyone to be imprisoned therein; or

B. who, being the owner, lessee or manager of any premises, knowingly permits any abandoned or discarded refrigerator, icebox, freezer, airtight container, cabinet or similar container of a capacity of one and one-half cubic feet or more, and which remains upon such premises in a condition whereby a child may be imprisoned therein.

Whoever commits abandonment of dangerous containers is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-8-6 Illegal Prescribing of Medicine

Illegal prescribing of medicine consists of any physician or other person, while under the influence of any alcoholic beverage or narcotic, prescribing or compounding for any other person, any poison, drug or medicine.

Whoever commits illegal prescribing of medicine while under the influence of any alcoholic beverage or narcotic is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-8-7 Conduct Offensive to Public Well-Being

Conduct offensive to public well-being consists of any person:



A. who is in the possession of any premises located on Pueblo Lands, permitting any privy or cesspool upon the premises owned or occupied by him, to become a menace to public health or to constitute a condition offensive to the public;

B. spitting upon or in any public building, store, church, house, school or other building in which persons frequently congregate, or upon or in any public carrier, public sidewalk or roadway; or

Whoever commits conduct offensive to public well-being is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-8-8 Unlawfully Permitting Livestock Upon Public Highways

A. Unlawfully permitting livestock upon public highways consists of any owner or custodian of livestock negligently permitting his livestock to run at large upon any part of a public highway which is fenced on both sides.

B. Every owner or custodian of livestock shall exercise diligence to keep his livestock off public fenced highways and shall promptly report to the state highway department any damage or disrepair discovery of fences maintained by that department.

C. A motorist using unfenced roads or highways which have livestock warning signs shall use due care to avoid collisions with livestock.

D. Whoever commits unlawfully permitting livestock upon public highways is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 9 - SEXUAL OFFENSES**

Sec. 8-9-1 Enticement of Child

A. Enticement of child consists of:

1. enticing, persuading or attempting to persuade a child under the age of sixteen years to enter any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under this Article; or

2. having possession of a child under the age of sixteen years in any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under this Article.

B. Whoever commits enticement of child is guilty of a Class 5 offense.

Enacted by Ordinance Number 11-O-01, approved April 14, 2011.

Sec. 8-9-2     Prostitution

Prostitution consists of knowingly engaging in or offering to engage in a sexual act for hire.

As used in this section “sexual act” means sexual intercourse, cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object of the genital or anal opening of another, whether or not there is any emission.

Whoever commits prostitution is guilty of a Class 6 offense, unless such crime is a second or subsequent conviction, in which case such person is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-9-3     Patronizing Prostitutes

Patronizing prostitutes consists of:

A. entering or remaining in a house of prostitution or any other place where prostitution is practiced, encouraged or allowed with intent to engage in a sexual act with a prostitute; or

B. knowingly hiring or offering to hire a prostitute, or one believed by the offeror to be a prostitute, to engage in a sexual act with the actor or another.

As used in this section, “a sexual act” means sexual intercourse, cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object of the genital or an anal opening of another whether or not there is any emission.

Whoever commits patronizing prostitutes is guilty of a Class 6 offense, unless such crime is a second or subsequent conviction, in which case such person is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-9-4     Promoting Prostitution

Promoting prostitution consists of any person, acting other than as a prostitute or patron of a prostitute:

A. knowingly establishing, owning, maintaining or managing a house of prostitution or a place where prostitution is practiced, encouraged or allowed, or participating in the establishment, ownership, maintenance or management thereof;

B. knowingly entering into any lease or rental agreement for any premises which a person partially or wholly owns or controls, knowing that such premises are intended for use as a house of prostitution or as a place where prostitution is practiced, encouraged or allowed;

C. knowingly procuring a prostitute for a house of prostitution or for a place where prostitution is practiced, encouraged or allowed;

D. knowingly inducing another to become a prostitute;

E. knowingly soliciting a patron for a prostitute or for a house of prostitution or for any place where prostitution is practiced, encouraged or allowed;

F. knowingly procuring a prostitute for a patron and receiving compensation therefor;

G. knowingly procuring transportation for, paying for the transportation of or transporting a person into or within the jurisdiction of the Pueblo with the intention of promoting that person's engaging in prostitution;

H. knowingly procuring through promises, threats, duress or fraud any person to come into the jurisdiction of the Pueblo or causing a person to leave the jurisdiction of the Pueblo for the purpose of prostitution; or

I. under pretense of marriage, knowingly detaining a person or taking a person into Pueblo Lands or causing a person to leave Pueblo Lands for the purpose of prostitution.

Whoever commits promoting prostitution is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-9-5 Accepting Earnings of a Prostitute

Accepting the earnings of a prostitute consists of accepting, receiving, levying or appropriating money or anything of value, without consideration, from the proceeds of the earnings of a person engaged in prostitution with the knowledge that the person is engaged in prostitution and that the earnings are derived from engaging in prostitution, or knowingly owning or knowingly managing a house or other place where prostitution is practiced or allowed and living or deriving support or maintenance, in whole or in part, from the earnings or proceeds of a person engaged in prostitution at that house or place.

Whoever commits accepting the earnings of a prostitute is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-9-6 Order for Medical Examination and Treatment

In addition to its general sentencing authority, the court may order any defendant convicted of prostitution or patronizing prostitutes to be examined for sexually transmitted infections and shall sentence any diseased defendant to submit to medical treatment until he is discharged from treatment as noninfectious.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-9-7     House of Prostitution; Public Nuisance

As used in this section “house of prostitution” means a building, enclosure or place that is used for the purpose of prostitution. A house of prostitution is a public nuisance per se.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-9-8     Remedy of Lessor

If the lessee of property has been convicted of using it as a house of prostitution, or if the property has been adjudged to constitute a public nuisance for that reason, the lease by which the property is held is voidable by the lessor. The lessor shall have the same remedies for regaining possession as in the case of a tenant holding over his term.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-9-9     Definitions

As used in Sections 8-9-10 through 8-9-18:

A.     “force or coercion” means:

1.     the use of physical force or physical violence;
2.     the use of threats to use physical violence or physical force against the victim or another when the victim believes that there is a present ability to execute the threats;
3.     the use of threats, including threats of physical punishment, kidnapping, extortion or retaliation directed against the victim or another when the victim believes that there is an ability to execute the threats;
4.     the perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act; or
5.     the perpetration of criminal sexual penetration or criminal sexual contact by a psychotherapist on his patient, with or without the patient’s consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy. Physical or verbal resistance of the victim is not an element of force or coercion;

B.     “great mental anguish” means psychological or emotional damage that requires psychiatric or psychological treatment or care, either on an inpatient or outpatient basis, and is characterized by extreme behavioral change or severe physical symptoms;

C.     “patient” means a person who seeks or obtains psychotherapy;

D. “personal injury” means bodily injury to a lesser degree than great bodily harm and includes, but is not limited to, disfigurement, mental anguish, chronic or recurrent pain, pregnancy or disease or injury to a sexual or reproductive organ;

E. “position of authority” means that position occupied by a parent, relative, household member, teacher, employer or other person who, by reason of that position, is able to exercise undue influence over a child;

F. “psychotherapist” means a person who is or purports to be a:

1. licensed physician who practices psychotherapy;
2. licensed psychologist;
3. licensed social worker;
4. licensed nurse;
5. counselor;
6. substance abuse counselor;
7. psychiatric technician;
8. mental health worker;
9. marriage and family therapist;
10. hypnotherapist; or
11. minister, priest, rabbi or other similar functionary of a religious organization acting in his role as a pastoral counselor;

G. “psychotherapy” means professional treatment or assessment of a mental or an emotional illness, symptom or condition;

H. “school” means any public or private school located on Pueblo Lands that offers a program of instruction designed to educate a person in a particular place, manner and subject area. “School” does not include a college or university; and

I. “spouse” means a legal husband or wife, unless the couple is living apart or either husband or wife has filed for separate maintenance or divorce.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-9-10 Criminal Sexual Penetration

A. Criminal sexual penetration is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission.

B. Criminal sexual penetration does not include medically indicated procedures.

C. Aggravated criminal sexual penetration consists of all criminal sexual penetration

perpetrated on a child under thirteen years of age with an intent to kill or with a depraved mind regardless of human life. Whoever commits aggravated criminal sexual penetration is guilty of a Class 1 offense for aggravated criminal sexual penetration.

D. Criminal sexual penetration in the first degree consists of all criminal sexual penetration perpetrated:

1. on a child under thirteen years of age;
2. by the use of force or coercion that results in great bodily harm or great mental anguish to the victim;

E. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:

1. by the use of force or coercion on a child thirteen to eighteen years of age;
2. on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate;
3. by the use of force or coercion that results in personal injury to the victim;
4. by the use of force or coercion when the perpetrator is aided or abetted by one or more persons;
5. in the commission of any other felony offence; or
6. when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual penetration in the second degree is guilty of a Class 2 offense. Whoever commits criminal sexual penetration in the second degree when the victim is a child who is thirteen to eighteen years of age is guilty of a Class 2 offense and shall be sentenced to the maximum sentence of imprisonment for Class 2 offenses which sentence shall not be suspended or deferred.

F. Criminal sexual penetration in the third degree consists of all criminal sexual penetration perpetrated through the use of force or coercion not otherwise specified in this section.

Whoever commits criminal sexual penetration in the third degree is guilty of a Class 3 offense.

G. Criminal sexual penetration in the fourth degree consists of all criminal sexual penetration:

1. not defined in Subsections D through F of this section perpetrated on a child thirteen to sixteen years of age when the perpetrator is at least eighteen years of age and is at least four years older than the child and not the spouse of that child; or
2. perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen

years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.

Whoever commits criminal sexual penetration in the fourth degree is guilty of a Class 4 offense.

Enacted by Ordinance Number 11-O-01, approved April 14, 2011.

#### Sec. 8-9-11 Criminal Sexual Contact

A. Criminal sexual contact is the unlawful and intentional touching of or applying force, without consent, to the unclothed intimate parts of another who has reached his eighteenth birthday, or intentionally causing another who has reached his eighteenth birthday to touch one's intimate parts.

B. Criminal sexual contact does not include touching by a psychotherapist on his patient that is:

1. inadvertent;
2. casual social contact not intended to be sexual in nature; or
3. generally recognized by mental health professionals as being a legitimate element of psychotherapy.

C. Criminal sexual contact is a Class 5 offense when perpetrated with the use of force or coercion.

D. Criminal sexual contact perpetrated:

1. by the use of force or coercion that results in personal injury to the victim;
2. by the use of force or coercion when the perpetrator is aided or abetted by one or more persons;
3. by the threat of serious violence against the victim;
4. by rendering unconscious or involuntary drugging of victim; or
5. when the perpetrator is armed with a deadly weapon

is a Class 3 offense.

E. For the purposes of this section, "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-9-12 Criminal Sexual Contact of a Minor

A. Criminal sexual contact of a minor is the unlawful and intentional touching of or applying force to the intimate parts of a minor or the unlawful and intentional causing of a minor to touch one's intimate parts. For the purposes of this section, "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

B. Criminal sexual contact of a minor in the second degree consists of all criminal sexual contact of the unclothed intimate parts of a minor perpetrated:

1. On a child under 13 years of age; or
2. On a child thirteen to eighteen years of age when:
  - a. The perpetrator is in a position of authority over the child and uses that authority to coerce the child to submit;
  - b. The perpetrator uses force or coercion that results in personal injury to the child;
  - c. The perpetrator uses force or coercion and is aided or abetted by one or more persons; or
  - d. The perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact of a minor in the second degree is guilty of a Class 2 offense, and the maximum allowable term of imprisonment shall be imposed and shall not be suspended or deferred.

C. Criminal sexual contact of a minor in the third degree consists of all criminal sexual contact:

1. on a child under thirteen years of age; or
2. on a child thirteen to eighteen years of age when:
  - a. the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit;
  - b. the perpetrator uses force or coercion which results in personal injury to the child;
  - c. the perpetrator uses force or coercion and is aided or abetted by one or more persons; or
  - d. the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact of a minor in the third degree is guilty of a Class 3 offense for a sexual offense against a child.

D. Criminal sexual contact of a minor in the fourth degree consists of all criminal sexual contact:

1. not defined in Subsection C of this section, of a child thirteen to eighteen years of age perpetrated with force or coercion; or
2. of a minor perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.



Whoever commits criminal sexual contact in the fourth degree is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**Sec. 8-9-13    Indecent Exposure**

A.     Indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view.

B.     As used in this section, “primary genital area” means the mons pubis, penis, testicles, mons veneris, vulva or vagina.

C.     Whoever commits indecent exposure is guilty of a Class 5 offense.

D.     In addition to any punishment provided pursuant to the provisions of this section, the court may order a person convicted for committing indecent exposure to participate in and complete a program of professional counseling at his or her own expense.

Enacted by Ordinance Number 11-O-01, approved April 14, 2011.

**Sec. 8-9-14    Indecent Dancing**

A.     Indecent dancing consists of a person knowingly and intentionally exposing his intimate parts to public view while dancing or performing in a licensed liquor establishment. “Intimate parts” means the mons pubis, penis, testicles, mons veneris, vulva, female breast or vagina. As used in this section, “female breast” means the areola, and “exposing” does not include any act in which the intimate part is covered by any non-transparent material.

B.     Whoever commits indecent dancing is guilty of a Class 6 offense.

C.     A liquor licensee, their transferee, or their lessee or agent who allows indecent dancing on the licensed premises is guilty of a Class 6 offense and his license may be suspended or revoked pursuant to the provisions of the Pueblo Liquor Code.

Enacted by Ordinance Number 11-O-01, approved April 14, 2011

**Sec. 8-9-15    Indecent Waitering**

A.     Indecent waitering consists of a person knowingly and intentionally exposing his intimate parts to public view while serving beverage or food in a licensed liquor establishment. “Intimate parts” means the mons pubis, penis, testicles, mons veneris, vulva, female breast or vagina. As used in this section, “female breast” means the areola and “exposing” does not include any act in which the intimate part is covered by any non-transparent material.

B.     Whoever commits indecent waitering is guilty of a Class 6 offense.

C. A liquor licensee or his lessee or agent who allows indecent waitering on the licensed premises is guilty of a Class 6 offense and his license may be suspended or revoked pursuant to the provisions of the Pueblo Liquor Code.

Enacted by Ordinance Number 11-O-01, approved April 14, 2011.

#### Sec. 8-9-16 Aggravated Indecent Exposure

A. Aggravated indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view in a lewd and lascivious manner, with the intent to threaten or intimidate another person, while committing one or more of the following acts or criminal offenses:

1. exposure to a child less than eighteen years of age;
2. assault, as provided in Sec. 8-3-1;
3. aggravated assault, as provided in Sec. 8-3-2;
4. assault with intent to commit a violent crime, as provided in Sec. 8-3-3;
5. battery, as provided in Sec. 8-3-4;
6. aggravated battery, as provided in Sec. 8-3-5;
7. criminal sexual penetration, as provided in Sec. 8-8-10; or
8. abuse of a child, as provided in Sec. 8-5-1.

B. As used in this section, “primary genital area” means the mons pubis, penis, testicles, mons veneris, vulva or vagina.

C. Whoever commits aggravated indecent exposure is guilty of a Class 4 offense.

D. In addition to any punishment provided pursuant to the provisions of this section, the court may order a person convicted for committing aggravated indecent exposure to participate in and complete a program of professional counseling at his own expense.

Enacted by Ordinance Number 11-O-01, approved April 14, 2011.

#### Sec. 8-9-17 Corroboration

The testimony of a victim need not be corroborated in prosecutions under Sections 8-9-10 through 8-9-13 of this act and such testimony shall be entitled to the same weight as the testimony of victims of other crimes under the Criminal Code.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-9-18 Testimony; Limitations; In Camera Hearing

A. As a matter of substantive right, in prosecutions pursuant to the provisions of Sections 8-9-10 through 8-9-16, evidence of the victim’s past sexual conduct, opinion evidence of the victim’s past sexual conduct or of reputation for past sexual conduct, shall not be admitted

unless, and only to the extent that the court finds that, the evidence is material to the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

B. As a matter of substantive right, in prosecutions pursuant to the provisions of Sections 8-9-10 through 8-9-16, evidence of a patient's psychological history, emotional condition or diagnosis obtained by an accused psychotherapist during the course of psychotherapy shall not be admitted unless, and only to the extent that, the court finds that the evidence is material and relevant to the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

C. If the evidence referred to in Subsection A or B of this section is proposed to be offered, the defendant shall file a written motion prior to trial. The court shall hear the pretrial motion prior to trial at an in camera hearing to determine whether the evidence is admissible pursuant to the provisions of Subsection A or B of this section. If new information, which the defendant proposes to offer pursuant to the provisions of Subsection A or B of this section, is discovered prior to or during the trial, the judge shall order an in camera hearing to determine whether the proposed evidence is admissible. If the proposed evidence is deemed admissible, the court shall issue a written order stating what evidence may be introduced by the defendant and stating the specific questions to be permitted.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-9-19 Video Recorded Depositions of Alleged Victims who are Under Sixteen Years of Age; Procedure; Use in Lieu of Direct Testimony

A. In any prosecution for criminal sexual penetration or criminal sexual contact of a minor, upon motion of the prosecutor and after notice to the opposing counsel, the court may, for a good cause shown, order the taking of a video recorded deposition of any alleged victim under the age of sixteen years. The video recorded deposition shall be taken before the judge in chambers in the presence of the prosecutor, the defendant and his attorneys. Examination and cross-examination of the alleged victim shall proceed at the taking of the video recorded deposition in the same manner as permitted at trial. Any video recorded deposition taken under the provisions of this section shall be viewed and heard at the trial and entered into the record in lieu of the direct testimony of the alleged victim.

B. For the purposes of this section, "video recorded deposition" means the visual recording, together with the associated sound, of a witness testifying under oath in the course of a judicial proceeding, upon oral examination and where an opportunity is given for cross-examination in the presence of the defendant and intended to be played back upon the trial of the action in court.

C. The cost of such video recording shall be paid by the Pueblo.

D. Video recordings which are a part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-9-20 Victims; Polygraph Examinations; Prohibited Actions

A law enforcement officer, prosecuting attorney or other Pueblo official shall not ask or require an adult, youth or child victim of a sexual offense provided in Sections 8-9-10 through 8-9-12 to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation, charging or prosecution of the offense. The victim's refusal to submit to a polygraph examination or other truth-telling device shall not prevent the investigation, charging or prosecution of the offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-9-21 Alleged Victims Who are under Thirteen Years of Age; Psychological Evaluation

In any prosecution for criminal sexual penetration or criminal sexual contact of a minor, if the alleged victim is under thirteen years of age, the court may hold an evidentiary hearing to determine whether to order a psychological evaluation of the alleged victim on the issue of competency as a witness. If the court determines that the issue of competency is in sufficient doubt that the court requires expert assistance, then the court may order a psychological evaluation of the alleged victim, provided however, that if a psychological evaluation is ordered it shall be conducted by only one psychologist or psychiatrist selected by the court who may be utilized by either or both parties; further provided that if the alleged victim has been evaluated on the issue of competency during the course of investigation by a psychologist or psychiatrist selected in whole or in part by law enforcement officials, the psychological evaluation, if any, shall be conducted by a psychologist or psychiatrist selected by the court upon the recommendation of the defense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-9-22 Sexual Assault; Law Enforcement Agency Policies; Submission of DNA Samples by Law Enforcement and Laboratories

- A. The Pueblo's Tribal Police Department shall develop and implement a policy that:
1. prescribes how it handles a sample of biological material collected and/or received pursuant to a medical examination of a sexual assault victim who reported the sexual assault to the Department;
  2. provides how the Department prioritizes a sample for DNA testing; and
  3. requires the Department to send a sample of biological material collected pursuant to a medical examination of a sexual assault victim who reported the sexual assault to the appropriate lab for DNA testing as soon as practicable after receiving the sample and, in all cases, within thirty days of the Department's receipt of the sample.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-9-23 Voyeurism

A. Voyeurism consists of intentionally using the unaided eye to view or intentionally using an instrumentality to view, photograph, videotape, film, webcast or record the intimate areas of another person without the knowledge and consent of that person:

1. while the person is in the interior of a bedroom, bathroom, changing room, fitting room, dressing room or tanning booth or the interior of any other area in which the person has a reasonable expectation of privacy; or

2. under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

B. Whoever commits voyeurism is guilty of a Class 5 offense, except if the victim is less than eighteen years of age, the offender is guilty of a Class 4 offense.

C. As used in this section:

1. “intimate areas” means the primary genital area, groin, buttocks, anus or breasts or the undergarments that cover those areas; and

2. “instrumentality” means a periscope, telescope, binoculars, camcorder, computer, motion picture camera, digital camera, telephone camera, photographic camera or electronic device of any type.

Enacted by Ordinance Number 11-O-01, approved April 14, 2011; amended by Resolution No. 2022-R-39, adopted December 17, 2022.

**ARTICLE 10 – MARITAL AND FAMILIAL OFFENSES**

Sec. 8-10-1 Bigamy

Bigamy consists of knowingly entering into a marriage by or with a person who has previously contracted one or more marriages which have not been dissolved by death, divorce or annulment. Both parties may be principals.

Whoever commits bigamy is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-10-2 Incest

Incest consists of knowingly intermarrying or having sexual intercourse with persons with the following degrees of consanguinity: parents and children including grandparents and grandchildren of every degree, brothers and sisters of the half as well as of the whole blood, uncles and nieces, aunts and nephews.

Whoever commits incest is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## ARTICLE 11 – CRIMES AGAINST REPUTATION

### Sec. 8-11-1 Libel

Libel consists of making, writing, publishing, selling or circulating without good motives and justifiable ends, any false and malicious statement affecting the reputation, business or occupation of another, or which exposes another to hatred, contempt, ridicule, degradation or disgrace.

Whoever commits libel is guilty of a Class 5 offense.

The word “malicious,” as used in this article, signifies an act done with evil or mischievous design and it is not necessary to prove any special facts showing ill-feeling on the part of the person who is concerned in making, printing, publishing or circulating a libelous statement against the person injured thereby.

A. A person is the maker of a libel who originally contrived and either executed it himself by writing, printing, engraving or painting, or dictated, caused or procured it to be done by others.

B. A person is the publisher of a libel who either of his own will or by the persuasion or dictation, or at the solicitation or employment for hire of another, executes the same in any of the modes pointed out as constituting a libel; but if anyone by force or threats is compelled to execute such libel he is guilty of no crime.

C. A person is guilty of circulating a libel who, knowing its contents, either sells, distributes or gives, or who, with malicious design, reads or exhibits it to others.

D. The written, printed or published statement to come within the definition of libel must falsely convey the idea either:

1. that the person to whom it refers has been guilty of some penal offenses;
2. that he has been guilty of some act or omission which, though not a penal offense, is disgraceful to him as a member of society, and the natural consequence of which is to bring him into contempt among honorable persons;
3. that he has some moral vice or physical defect or disease which renders him unfit for intercourse with respectable society, and as such should cause him to be generally avoided;
4. that he is notoriously of bad or infamous character; or
5. that any person in office or a candidate therefor is dishonest and therefore unworthy of such office, or that while in office he has been guilty of some malfeasance rendering him unworthy of the place.

E. It shall be sufficient to constitute the crime of libel if the natural consequence of the publication of the same is to injure the person defamed although no actual injury to his reputation need be proven.

F. No statement made in the course of a legislative or judicial proceeding, whether true or false, although made with intent to injure and for malicious purposes, comes within the definition of libel.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 12 – ABUSE OF PRIVACY**

### **Sec. 8-12-1 Interference with Communications; Exception**

Interference with communications consists of knowingly and without lawful authority:

A. displacing, removing, injuring or destroying any radio station, television tower, antenna or cable, telegraph or telephone line, wire, cable, pole or conduit belonging to another, or the material or property appurtenant thereto;

B. cutting, breaking, tapping or making any connection with any telegraph or telephone line, wire, cable or instrument belonging to or in the lawful possession or control of another, without the consent of such person owning, possessing or controlling such property;

C. reading, interrupting, taking or copying any message, communication or report intended for another by telegraph or telephone without the consent of a sender or intended recipient thereof;

D. preventing, obstructing or delaying the sending, transmitting, conveying or delivering on Pueblo Lands of any message, communication or report by or through telegraph or telephone; or

E. using any apparatus to do or cause to be done any of the acts hereinbefore mentioned or to aid, agree with, comply or conspire with any person to do or permit or cause to be done any of the acts hereinbefore mentioned.

Whoever commits interference with communications is guilty of a Class 5 offense, unless such interference with communications is done:

1. under a court order; or
2. by an operator of a switchboard or an officer, employee or agent of any communication common carrier in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his services or to the protection of rights or property of the carrier of such communication; or
3. by a person acting under color of law in the investigation of a crime, where such person is a party to the communication, or one of the parties to the communication has given prior consent to such interception, monitoring or recording of such communication.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **Sec. 8-12-2 Disturbing a Marked Burial Ground**

Disturbing a marked burial ground consists of knowingly and willfully disturbing or removing the remains, or any part of them, or any funerary object, material object or associated artifact of any person interred in any church, churchyard, cemetery or marked burial ground or knowingly and willfully procuring or employing any other person to disturb or remove the remains, or any part of them, or any funerary object, material object or artifact associated with any person interred in any church, churchyard, cemetery or marked burial ground, other than pursuant to an order of the Contemporary Court or the permission of the Tribal Council. As used in this section “marked burial ground” means any interment visibly marked according to traditional or customary practice.

Whoever commits disturbing a marked burial ground is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-12-3 Defacing Tombs

Defacing tombs consists of either:

A. intentionally defacing, breaking, destroying or removing any tomb, monument or gravestone erected to any deceased person or any memento, memorial or marker upon any place of burial of any human being or any ornamental plant, tree or shrub appertaining to the place of burial of any human being; or

B. intentionally marking, defacing, injuring, destroying or removing any fence, post, rail or wall of any cemetery or graveyard or erected within any cemetery or graveyard or any marker, memorial or funerary object upon any place of burial of any human being.

Whoever commits defacing a tomb is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-13-4 Unlawful Burial

Unlawful burial consists of the using of any land or lands as a burial place of interment within fifty yards from either side of the bank or border of any stream, river or any body of water, by a person or persons, society of persons, order, corporation or corporations.

Whoever commits unlawful burial is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **ARTICLE 13 – VIOLATION OF CIVIL RIGHTS**

#### Sec. 8-13-1 Disturbing Lawful Assembly

Disturbing lawful assembly consists of:



A. disturbing any religious society or any member thereof when assembled or collected together in public worship; or

B. disturbing any meeting of the people assembled for any legal object.

Whoever commits disturbing lawful assembly is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-13-2 Blacklisting

Blacklisting consists of an employer or his agent preventing or attempting to prevent a former employee from obtaining other employment.

Whoever commits blacklisting is guilty of a Class 5 offense.

Upon request, an employer may give an accurate report or honest opinion of the qualifications and the performance of a former employee. An employer is defined as any person employing labor or the agent of such person.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **ARTICLE 14 – TRESPASS**

#### Sec. 8-14-1 Criminal Trespass

A. Criminal trespass consists of knowingly entering or remaining upon posted private property including an assignment of Pueblo land, without possessing written permission from the owner or person in control of the land.

B. Criminal trespass also consists of knowingly entering or remaining upon the unposted lands of another knowing that such consent to enter or remain is denied or withdrawn by the owner or occupant thereof. Notice of no consent to enter shall be deemed sufficient notice to the public and evidence to the court, by the posting of the property at all vehicular access entry ways.

C. Any person who enters upon the lands of another without prior permission and injures, damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features, is guilty of a Class 5 offense, and shall be liable to the owner, lessee or person in lawful possession for civil damages in an amount equal to double the value of the damage to the property injured or destroyed.

D. Whoever commits criminal trespass is guilty of a Class 5 offense.

E. Whoever knowingly removes, tampers with or destroys any “no trespass” sign is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-14-1.1 Types of Trespass; Injury to Realty

A. Any person who enters and remains on the lands of another after having been requested to leave is guilty of a Class 5 offense.

B. Any person who enters upon the lands of another when such lands are posted against trespass at every roadway or apparent way of access is guilty of a Class 5 offense.

C. Any person who drives a vehicle upon the lands of another except through a roadway or other apparent way of access, when such lands are fenced in any manner, is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-14-2 [Reserved]

Sec. 8-14-3 Wrongful Use of Pueblo Property; Permit; Penalties

A. Wrongful use of Pueblo property consists of:

1. knowingly entering any Pueblo property without permission of the lawful custodian or his representative when the Pueblo property is not open to the public;

2. remaining in or occupying any Pueblo property after having been requested to leave by the lawful custodian, or his representative, who has determined that the Pueblo property is being used or occupied contrary to its intended or customary use or that the Pueblo property may be damaged or destroyed by the use; or

3. depriving the Pueblo member of the intended or customary use of Pueblo property without a permit.

B. As used in this section, “Pueblo property” means any building, facility, structure or enclosure used for a public purpose or as a place of public gathering, owned or under the control of the Pueblo.

C. Any person who commits wrongful use of Pueblo property is guilty of a Class 6 offense.

D. Any person who commits wrongful use of Pueblo property after having been requested to leave by the lawful custodian or his representative or any peace officer, who has jurisdiction, is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-14-4 Breaking and Entering

A. Breaking and entering consists of the unauthorized entry of any vehicle, dwelling or other structure, movable or immovable, where entry is obtained by fraud or deception, or by the breaking or dismantling of any part of the vehicle, dwelling or other structure, or by the breaking or dismantling of any device used to secure the vehicle, dwelling or other structure.

B. Whoever commits breaking and entering is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 15 – PROPERTY DAMAGE**

### **Sec. 8-15-1 Criminal Damage to Property**

Criminal damage to property consists of intentionally damaging any real or personal property of another without the consent of the owner of the property.

Whoever commits criminal damage to property is guilty of a Class 6 offense, except that when the damage to the property amounts to more than one thousand dollars (\$1,000), such person is guilty of a class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **Sec. 8-15-2 Unauthorized Graffiti on Personal or Real Property**

A. Graffiti consists of intentionally and maliciously defacing any real or personal property of another with graffiti or other inscribed material inscribed with ink, paint, spray paint, crayon, charcoal or the use of any object without the consent or reasonable ground to believe there is consent of the owner of the property.

B. Whoever commits graffiti to real or personal property when the damage to the property is one thousand dollars (\$1,000) or less is guilty of a Class 6 offense.

C. Whoever commits graffiti to real or personal property when the damage to the property is greater than one thousand dollars (\$1,000) is guilty of a Class 4 offense.

D. Whoever commits graffiti shall be required to make restitution to the property owner for the cost of damages and restoration. When a single occurrence of graffiti is committed by more than one individual, the court may apportion the amount of restitution owed by each offender in accordance with each offender's degree of culpability.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-15-3 Desecration of a Religious Site or Structure

Desecration of a religious site or structure consists of willfully, maliciously and intentionally defacing a church, kiva, society house, or other religious site or structure, or any portion thereof. Whoever commits desecration of a religious site or structure is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**ARTICLE 16 – LARCENY**

Sec. 8-16-1 Larceny

- A. Larceny consists of the stealing of anything of value that belongs to another.
- B. Whoever commits larceny when the value of the property stolen is two hundred fifty dollars (\$250) or less is guilty of a Class 6 offense.
- C. Whoever commits larceny when the value of the property stolen is over two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500) is guilty of a Class 5 offense.
- D. Whoever commits larceny when the value of the property stolen is over five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500) is guilty of a Class 4 offense.
- E. Whoever commits larceny when the value of the property stolen is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a Class 3 offense.
- F. Whoever commits larceny when the value of the property stolen is over twenty thousand dollars (\$20,000) is guilty of a Class 2 offense.
- G. Whoever commits larceny when the property of value stolen is livestock is guilty of a Class 3 offense regardless of its value.
- H. Whoever commits larceny when the property of value stolen is a firearm is guilty of a Class 4 offense when its value is less than two thousand five hundred dollars (\$2,500).

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-16-2 Robbery

Robbery consists of the theft of anything of value from the person of another or from the immediate control of another, by use or threatened use of force or violence.

Whoever commits robbery is guilty of a Class 3 offense.

Whoever commits robbery while armed with a deadly weapon is, for the first offense, guilty of a Class 2 offense and, for a second and subsequent offenses, is guilty of a Class 1 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16-3 Burglary

Burglary consists of the unauthorized entry of any vehicle, dwelling or other structure, movable or immovable, with the intent to commit any felony offense or theft therein.

A. Any person who, without authorization, enters a dwelling house with intent to commit any felony offense or theft therein is guilty of a Class 3 offense.

B. Any person who, without authorization, enters any vehicle, watercraft, aircraft or other structure, movable or immovable, with intent to commit any felony offense or theft therein is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16-4 Aggravated Burglary

Aggravated burglary consists of the unauthorized entry of any vehicle, dwelling or other structure, movable or immovable, with intent to commit any felony offense or theft therein and the person either:

- A. is armed with a deadly weapon;
- B. after entering, arms himself with a deadly weapon;
- C. commits a battery upon any person while in such place, or in entering or leaving such place.

Whoever commits aggravated burglary is guilty of a Class 2 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16-5 Possession of Burglary Tools

Possession of burglary tools consists of having in the person's possession a device or instrumentality designed or commonly used for the commission of burglary and under circumstances evincing an intent to use the same in the commission of burglary.

Whoever commits possession of burglary tools is guilty of Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-16-6 Fraud

A. Fraud consists of the intentional misappropriation or taking of anything of value that belongs to another by means of fraudulent conduct, practices or representations.

B. Whoever commits fraud when the value of the property misappropriated or taken is two hundred fifty dollars (\$250) or less is guilty of a Class 6 offense.

C. Whoever commits fraud when the value of the property misappropriated or taken is over two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500) is guilty of a Class 5 offense.

D. Whoever commits fraud when the value of the property misappropriated or taken is over five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500) is guilty of a Class 4 offense.

E. Whoever commits fraud when the value of the property misappropriated or taken is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a Class 3 offense.

F. Whoever commits fraud when the value of the property misappropriated or taken exceeds twenty thousand dollars (\$20,000) is guilty of a Class 2 offense.

G. Whoever commits fraud when the property misappropriated or taken is a firearm that is valued at less than two thousand five hundred dollars (\$2,500) is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-16-7 Embezzlement

A. Embezzlement consists of a person embezzling or converting to the person's own use anything of value, with which the person has been entrusted, with fraudulent intent to deprive the owner thereof.

B. Whoever commits embezzlement when the value of the thing embezzled or converted is two hundred fifty dollars (\$250) or less is guilty of a Class 6 offense.

C. Whoever commits embezzlement when the value of the thing embezzled or converted is over two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500) is guilty of a Class 5 offense.

D. Whoever commits embezzlement when the value of the thing embezzled or converted is over five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500) is guilty of a Class 4 offense.

E. Whoever commits embezzlement when the value of the thing embezzled or converted is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a Class 3 offense.

F. Whoever commits embezzlement when the value of the thing embezzled or converted exceeds twenty thousand dollars (\$20,000) is guilty of a Class 2 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16-8 Extortion

Extortion consists of the communication or transmission of any threat to another by any means whatsoever with intent thereby to wrongfully obtain anything of value or to wrongfully compel the person threatened to do or refrain from doing any act against his will.

Any of the following acts shall be sufficient to constitute a threat under this section:

A. a threat to do an unlawful injury to the person or property of the person threatened or of another;

B. a threat to accuse the person threatened, or another, of any crime;

C. a threat to expose, or impute to the person threatened, or another, any deformity or disgrace;

D. a threat to expose any secret affecting the person threatened, or another; or

E. a threat to kidnap the person threatened or another.

Whoever commits extortion is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16-9 Forgery

A. Forgery consists of:

1. falsely making or altering any signature to, or any part of, any writing purporting to have any legal efficacy with intent to injure or defraud; or

2. knowingly issuing or transferring a forged writing with intent to injure or defraud.

B. Whoever commits forgery when there is no quantifiable damage or when the damage is two thousand five hundred dollars (\$2,500) or less is guilty of a Class 4 offense.

C. Whoever commits forgery when the damage is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a Class 3 offense.

D. Regardless of value, whoever commits forgery of a will, codicil, trust instrument, deed, mortgage, lien or any other instrument affecting title to real property is guilty of a Class 3 offense.

E. Whoever commits forgery when the damage is over twenty thousand dollars (\$20,000) is guilty of a class 2 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16-10 Receiving Stolen Property; Penalties

A. Receiving stolen property means intentionally to receive, retain or dispose of stolen property knowing that it has been stolen or believing it has been stolen, unless the property is received, retained or disposed of with intent to restore it to the owner.

B. The requisite knowledge or belief that property has been stolen is presumed in the case of a dealer who:

1. is found in possession or control of property stolen from two or more persons on separate occasions;
2. acquires stolen property for a consideration that the dealer knows is far below the property's reasonable value. A dealer shall be presumed to know the fair market value of the property in which the dealer deals; or
3. is found in possession or control of five or more items of property stolen within one year prior to the time of the incident charged pursuant to this section.

C. For the purposes of this section:

1. "dealer" means a person in the business of buying or selling goods or commercial merchandise; and
2. "stolen property" means any property acquired by theft, larceny, fraud, embezzlement, robbery or armed robbery.

D. Whoever commits receiving stolen property when the value of the property is two hundred fifty dollars (\$250) or less is guilty of a Class 6 offense.

E. Whoever commits receiving stolen property when the value of the property is over two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500) is guilty of a Class 5 offense.

F. Whoever commits receiving stolen property when the value of the property is over five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500) is guilty of a Class 4 offense.



G. Whoever commits receiving stolen property when the value of the property is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a Class 3 offense.

H. Whoever commits receiving stolen property when the value of the property exceeds twenty thousand dollars (\$20,000) is guilty of a Class 2 offense.

I. Whoever commits receiving stolen property when the property is a firearm is guilty of a Class 4 offense when its value is less than two thousand five hundred dollars (\$2,500).

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16-11 Falsely Representing Oneself as Incapacitated

Falsely representing oneself as disabled consists of a person falsely representing the person's own self to be blind, visually impaired, deaf or having a physical disability for the purpose of obtaining money or other thing of value.

Whoever commits falsely representing oneself as disabled is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16-12 Cheating Machine or Device

Cheating machine or device consists of any person, with intent to defraud, attempting to operate or causing to be operated any automatic vending machine, parking meter, coin-box telephone, or any machine or receptacle designed to receive lawful money of the United States in connection with the sale, use or enjoyment of property or service, by means of any slug, or by any false, counterfeited, mutilated, sweated or foreign coin, or by any means, method, trick or device.

Whoever commits cheating machine or device is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16-13 Falsely Obtaining Services or Accommodations; Probable Cause; Immunity; Penalty

A. Falsely obtaining services or accommodations consists of a person obtaining service, food, entertainment or accommodations without paying with the intent to cheat or defraud the owner or person supplying the service, food, entertainment or accommodations.

B. A law enforcement officer may arrest without warrant a person the officer has probable cause to believe has committed the crime of falsely obtaining services or accommodations. A merchant, owner or proprietor who causes such an arrest shall not be

criminally or civilly liable if the merchant, owner or proprietor has actual knowledge that the person arrested has committed the crime of falsely obtaining services or accommodations.

C. Whoever commits falsely obtaining services or accommodations when the value of the service, food, entertainment or accommodations furnished is:

1. less than two hundred fifty dollars (\$250) is guilty of a Class 6 offense;
2. more than two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500) is guilty of a Class 5 offense;
3. more than five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500) is guilty of a Class 4 offense;
4. more than two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a Class 3 offense; and
5. more than twenty thousand dollars (\$20,000) is guilty of a Class 2 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16-14 Unlawful Removal of Effects

Unlawful removal of effects consists of any person removing or causing to be removed any baggage or effects from any hotel, motel, trailer park, inn, rented dwelling or boardinghouse while there is a lien existing thereon for the proper charges due for fare or board furnished from such hotel, motel, trailer park, inn, rented dwelling or boardinghouse, and where the owner or person in possession of such baggage or effects is given actual notice of the fact of such lien, or where a notice of such lien has been conspicuously posted upon the premises adjacent to such baggage or effects, giving notice of the fact of such lien and the amount thereof.

Whoever commits unlawful removal of effects is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16-15 Shoplifting; Definitions

As used in Sec 8-15-16 through 8-15-19:

A. “store” means a place where merchandise is sold or offered to the public for sale at retail;

B. “merchandise” means chattels of any type or description regardless of the value offered for sale in or about a store; and

C. “merchant” means any owner or proprietor of any store, or any agent, servant or employee of the owner or proprietor.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## Sec. 8-16-16 Shoplifting

### A. Shoplifting consists of one or more of the following acts:

1. willfully taking possession of merchandise with the intention of converting it without paying for it;
2. willfully concealing merchandise with the intention of converting it without paying for it;
3. willfully altering a label, price tag or marking upon merchandise with the intention of depriving the merchant of all or some part of the value of it; or
4. willfully transferring merchandise from the container in or on which it is displayed to another container with the intention of depriving the merchant of all or some part of the value of it.

### B. Whoever commits shoplifting when the value of the merchandise shoplifted:

1. is two hundred fifty dollars (\$250) or less is guilty of a Class 6 offense;
2. is more than two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500) is guilty of a Class 5 offense;
3. is more than five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500) is guilty of a Class 4 offense;
4. is more than two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a Class 3 offense; or
5. is more than twenty thousand dollars (\$20,000) is guilty of a Class 2 offense.

### C. An individual charged with a violation of this section shall not be charged with a separate or additional offense arising out of the same transaction.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## Sec. 8-16-17 Civil Liability of Adult Shoplifter; Penalty

Any person who has reached the age of majority and who has been convicted of shoplifting, may be civilly liable for the retail value of the merchandise, punitive damages of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250), costs of the suit and reasonable attorney's fees. However, the merchant shall not be entitled to recover damages for the retail value of any recovered undamaged merchandise.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## Sec. 8-16-18 [Reserved]

## Sec. 8-16-19 Reasonable Detention

If any law enforcement officer, special officer or merchant has probable cause for believing that a person has willfully taken possession of any merchandise with the intention of converting it without paying for it, or has willfully concealed merchandise, and that he can recover the merchandise by detaining the person or taking him into custody, the law enforcement officer, special officer or merchant may, for the purpose of attempting to effect a recovery of the merchandise, take the person into custody and detain him in a reasonable manner for a reasonable time. Such taking into custody or detention shall not subject the officer or merchant to any criminal or civil liability.

Any law enforcement officer may arrest without warrant any person he has probable cause for believing has committed the crime of shoplifting. Any merchant who causes such an arrest shall not be criminally or civilly liable if he has probable cause for believing the person so arrested has committed the crime of shoplifting.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## Sec. 8-16-20 Theft of Identity; Obtaining Identity by Electronic Fraud

A. Theft of identity consists of willfully obtaining, recording or transferring personal identifying information of another person without the authorization or consent of that person and with the intent to defraud that person or another or with the intent to sell or distribute the information to another for an illegal purpose.

B. Obtaining identity by electronic fraud consists of knowingly and willfully soliciting, requesting or taking any action by means of a fraudulent electronic communication with intent to obtain the personal identifying information of another.

C. As used in this section:

1. “fraudulent electronic communication” means a communication by a person that is an electronic mail message, web site or any other use of the internet that contains fraudulent, false, fictitious or misleading information that depicts or includes the name, logo, web site address, email address, postal address, telephone number or any other identifying information of a business, organization or agency, to which the person has no legitimate claim of right;

2. “personal identifying information” means information that alone or in conjunction with other information identifies a person, including the person’s name, address, telephone number, driver’s license number, social security number, date of birth, biometric data, place of employment, mother’s maiden name, demand deposit account number, checking or savings account number, credit card or debit card number, personal identification number, electronic identification code, automated or electronic signature, passwords or any other numbers or information that can be used to obtain access to a person’s financial resources, obtain identification, act as identification or obtain goods or services; and

3. “biometric data” means data, such as finger, voice, retina or iris prints or deoxyribonucleic acid, that capture, represent or enable the reproduction of unique physical attributes of a person.

D. Whoever commits theft of identity is guilty of a Class 4 offense.

E. Whoever commits obtaining identity by electronic fraud is guilty of a Class 4 offense.

F. Prosecution pursuant to this section shall not prevent prosecution pursuant to any other provision of the law when the conduct also constitutes a violation of that other provision.

G. In a prosecution brought pursuant to this section, the theft of identity or obtaining identity by electronic fraud shall be considered to have been committed:

1. where the person whose identifying information was appropriated, obtained or sought resided at the time of the offense; or

2. where any part of the offense took place, regardless of whether the defendant was ever actually present there.

H. A person found guilty of theft of identity or of obtaining identity by electronic fraud shall, in addition to any other punishment, be ordered to make restitution for any financial loss sustained by a person injured as the direct result of the offense. In addition to out-of-pocket costs, restitution may include payment for costs, including attorney fees, incurred by that person in clearing the person’s credit history, credit rating, criminal history or criminal charges or costs incurred in connection with a legal proceeding to satisfy a debt, lien, judgment or other obligation of that person arising as a result of the offense.

I. The court shall issue written findings of fact and may issue orders as are necessary to correct public records and errors in credit reports and identifying information that contain false information as a result of the theft of identity or of obtaining identity by electronic fraud.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16-21 Credit Cards; Definitions

As used in Sec. 8-16-22 through 8-16-32:

A. “cardholder” means the person or organization identified on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer;

B. “credit card” means:

1. any instrument or device, whether known as a credit card, credit plate, charge card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, either on credit or in

consideration of an undertaking or guarantee by the issuer of the payment of a check drawn by the cardholder; or

2. a credit card account number;

C. “expired credit card” means a credit card which shows on its face that it is outdated;

D. “issuer” means the business organization or financial institution, or its duly authorized agent, which issues a credit card;

E. “participating party” means a business organization, or financial institution, other than the issuer, which acquires for value a sales slip or agreement;

F. “sales slip or agreement” means any writing evidencing a credit card transaction;

G. “merchant” means every person who is authorized by an issuer or a participating party to furnish money, goods, services or anything else of value upon presentation of a credit card by a cardholder;

H. “incomplete credit card” means a credit card upon which a part of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder, has not been stamped, embossed, imprinted or written on it;

I. “revoked credit card” means a credit card for which the permission to use has been suspended or terminated by the issuer, and notice thereof has been given to the cardholder; and

J. “anything of value” includes money, goods and services.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## Sec. 8-16-22 Theft of a Credit Card by Taking or Retaining Possession of Card Taken

A person who takes a credit card from the person, possession, custody or control of another without the cardholder’s consent, or who with knowledge that it has been so taken, acquires or possesses a credit card with the intent to use it or to sell it, or to transfer it to a person other than the issuer or the cardholder, is guilty of a Class 4 offense. Taking a credit card without consent includes obtaining it by conduct defined or known as statutory larceny, common-law larceny by trespassory taking, common-law larceny by trick, embezzlement or obtaining property by false pretense, false promise or extortion.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-16-23 Possession of a Credit Card Stolen, Lost, Mislaid or Delivered by Mistake

A person other than the issuer who receives or possesses a credit card that he knows or has reason to know to have been stolen, lost, mislaid or delivered under a mistake as to the identity or address of the cardholder, and who retains possession thereof with the intent to use it or to sell it or to transfer it to a person other than the issuer or the cardholder, is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-16-24 Fraudulent Transfer or Receipt of a Credit Card

A person other than the issuer, or his authorized agent, who, with intent to defraud, transfers possession of a credit card to a person other than the person whose name appears thereon, or a person who with intent to defraud receives possession of a credit card issued in the name of a person other than himself from a person other than the issuer, or his authorized agent, is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-16-25 Fraudulent Taking, Receiving or Transferring Credit Cards

Any person who, with intent to defraud, receives, sells or transfers a credit card by making, directly or indirectly, any false statement of a material fact, either orally or in writing, respecting his identity or financial condition or that of any other person, firm or corporation, is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-16-26 Dealing in Credit Cards of Another

Any person, other than the issuer, who possesses, receives, sells or transfers four or more credit cards, issued in a name or names other than his own in violation of Sections 8-16-22 or 8-16-23 or 8-16-24 or 8-16-25 is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16-27 Forgery of a Credit Card

A person who, with intent to defraud a purported issuer, or a person or organization providing money, goods, services or anything else of value, or any other person, makes or embosses a purported credit card, or alters such a credit card, without the consent of the issuer, is guilty of a Class 4 offense. A person “makes” a credit card when he makes or draws, in whole or in part, a device or instrument which purports to be the credit card of a named issuer but which is not such a credit card because the issuer did not authorize the making or drawing, or when he alters a credit card which was validly issued. A person “embosses” a credit card when, without the authorization of the named issuer, he completes a credit card by adding any other matter, other than the signature of a cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16-28 Fraudulent Signing of Credit Cards or Sales Slips or Agreements

Any person, other than a cardholder, or a person authorized by him, who, with intent to defraud, signs the name of another, or of a fictitious person, to a credit card or to a sales slip or agreement is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16-29 Fraudulent Use of a Credit Card

A. Fraudulent use of a credit card consists of a person obtaining anything of value, with intent to defraud, by using:

1. a credit card obtained in violation of Sec. 8-15-22 through 8-15-31;
2. a credit card that is invalid, expired or revoked;
3. a credit card while fraudulently representing that the person is the cardholder named on the credit card or an authorized agent or representative of the cardholder named on the credit card; or
4. a credit card issued in the name of another person without the consent of the person to whom the card has been issued.

B. Whoever commits fraudulent use of a credit card when the value of the property or service obtained is two hundred fifty dollars (\$250) or less in any consecutive six-month period is guilty of a Class 6 offense.

C. Whoever commits fraudulent use of a credit card when the value of the property or service obtained is over two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500) in any consecutive six-month period is guilty of a Class 5 offense.

D. Whoever commits fraudulent use of a credit card when the value of the property or service obtained is over five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500) in any consecutive six-month period is guilty of a Class 4 offense.



E. Whoever commits fraudulent use of a credit card when the value of the property or service obtained is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) in any consecutive six-month period is guilty of a Class 3 offense.

F. Whoever commits fraudulent use of a credit card when the value of the property or service obtained is over twenty thousand dollars (\$20,000) in any consecutive six-month period is guilty of a Class 2 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16-30 Fraudulent Acts by Merchants or their Employees

A. A merchant or the employee of a merchant commits fraud if, with intent to defraud, the merchant or employee furnishes or allows to be furnished anything of value upon presentation of a credit card:

1. obtained or retained in violation of Sec. 8-15-22 through 8-15-31;
2. fraudulently made or embossed;
3. fraudulently signed;
4. that the merchant or employee knows is invalid, expired or revoked; or
5. by a person whom the merchant or employee knows is not the cardholder named on the credit card or an authorized agent or representative of the cardholder named on the credit card.

B. When the value of anything furnished by a merchant, or by an employee of a merchant, in violation of this section:

1. is two hundred fifty dollars (\$250) or less in any consecutive six-month period, the offense is a Class 6 offense;
2. is more than two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500) in any consecutive six-month period, the offense is a Class 5 offense;
3. is more than five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500) in any consecutive six-month period, the offense is a Class 4 offense;
4. is more than two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) in any consecutive six-month period, the offense is a Class 3 offense; or
5. is more than twenty thousand dollars (\$20,000) in any consecutive six-month period, the offense is a Class 2 offense.

C. A merchant or the employee of a merchant commits fraud if, with intent to defraud, the merchant or employee fails to furnish anything of value that the merchant or employee represents in writing to the issuer or to a participating party that the merchant or employee has furnished on a credit card or cards of the issuer. When the difference between the value of anything actually furnished to a person and the value represented by the merchant to the issuer or participating party:

1. is two hundred fifty dollars (\$250) or less in any consecutive six-month period, the offense is a Class 6 offense;
2. is more than two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500) in any consecutive six-month period, the offense is a Class 5 offense;
3. is more than five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500) in any consecutive six-month period, the offense is a Class 4 offense;
4. is more than two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) in any consecutive six-month period, the offense is a Class 3 offense; or
5. is more than twenty thousand dollars (\$20,000) in any consecutive six-month period, the offense is a Class 2 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### **Sec. 8-16-31 Possession of Incomplete Credit Cards or Machinery, Plates or Other Contrivance**

A. Any person who possesses an incomplete credit card, with intent to defraud, is guilty of a Class 5 offense. Possession of four or more incomplete credit cards, with intent to defraud, is a Class 4 offense.

B. Any person, who with intent to defraud, possesses machinery, plates or any other contrivance designed to reproduce instruments purporting to be credit cards of an issuer who has not consented to the preparation of such credit cards, is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### **Sec. 8-16-32 Receipt of Property Obtained in Violation of Act**

A person who receives money, goods, services or anything else of value obtained in violation of Sec. 8-15-29, and who knows or has reason to believe that it was so obtained, violates this section. The degree of the offense is determined as follows:

- A. when the value of all things of value obtained from a person in violation of this section is two hundred fifty dollars (\$250) or less in any consecutive six-month period, then the offense is a Class 6 offense;
- B. when the value of all things of value obtained from a person in violation of this section is more than two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500) in any consecutive six-month period, then the offense is a Class 5 offense;
- C. when the value of all things of value obtained from a person in violation of this section is more than five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500) in any consecutive six-month period, then the offense is a Class 4 offense;

D. when the value of all things of value obtained from a person in violation of this section is more than two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) in any consecutive six-month period, then the offense is a Class 3 offense; or

E. when the value of all things of value obtained from a person in violation of this section is more than twenty thousand dollars (\$20,000) in any consecutive six-month period, then the offense is a Class 2 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**Sec. 8-16-33 Fraudulent Acts to Obtain or Retain Possession of Rented or Leased Vehicle or Other Personal Property; Penalty**

A person who rents or leases a vehicle or other personal property and obtains or retains possession of it by means of any false or fraudulent representation, fraudulent concealment, false pretense, trick, artifice or device, including a false representation as to the person's name, residence, employment or operator's license, is guilty of a:

A. Class 6 offense if the vehicle or property has a value of two hundred fifty dollars (\$250) or less;

B. Class 5 offense if the vehicle or property has a value of over two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500);

C. Class 4 offense if the property or vehicle has a value of over five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500);

D. Class 3 offense if the property or vehicle has a value of over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000); and

E. Class 2 offense if the property or vehicle has a value of over twenty thousand dollars (\$20,000).

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**ARTICLE 16A – UNAUTHORIZED RECORDING**

**Sec. 8-16A-1 Definitions**

As used in this Article:

A. "audiovisual recording" means a recording on which images, including images accompanied by sound, are recorded or otherwise stored, including motion picture film, video cassette, video tape, video disc, other recording mediums or a copy that duplicates in whole or in part the original, but does not include recordings produced by an individual for personal use that are not commercially distributed for profit;

B. “fixed” means embodied in a recording or other tangible medium of expression, by or under the authority of the owner, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced or otherwise communicated for a period of more than transitory duration;

C. “live performance” means a recitation, rendering or playing of a series of images, musical, spoken or other sounds, or a combination of images and sounds;

D. “manufacturer” means any person who actually transfers or causes the transfer of a recording, or assembles and transfers any product containing any recording as a component thereof, but does not include the manufacturer of a cartridge or casing for a recording;

E. “owner” means a person who owns the sounds or images fixed in a master phonograph record, master disc, master tape, master film or other recording on which sound or image is or can be recorded and from which the transferred recorded sounds or images are directly or indirectly derived;

F. “person” means any individual, firm, partnership, corporation, association or other entity;

G. “recording” means a tangible medium on which sounds, images or both are recorded or otherwise stored, including an original phonograph record, disc, tape, audio cassette or videocassette, wire, film or other medium now existing or developed later on which sounds, images or both are or can be recorded or otherwise stored, or a copy or reproduction that duplicates in whole or in part the original;

H. “tangible medium of expression” means the material object on which sounds, images or a combination of both are fixed by any method now known or later developed, and from which the sounds, images or combination of both can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device; and

I. “transfer” means to duplicate a recording from one tangible medium of expression to another recording.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## Sec. 8-16A-2 Unauthorized Recording; Prohibited Act; Penalties

A. It is unlawful for any person to:

1. knowingly transfer for sale or cause to be transferred any recording with intent to sell it or cause it to be sold or use it or cause it to be used for commercial advantage or private financial gain without the consent of the owner;

2. transport within the Pueblo for commercial advantage or private financial gain a recording with the knowledge that the sounds have been transferred without the consent of the owner; or

3. advertise or offer for sale, sell, rent or cause the sale, resale or rental of or possess for one or more of these purposes any recording that the person knows has been transferred without the consent of the owner.

B. Any person violating the provisions of Subsection A of this section:

1. when the offense involves seven or more unauthorized recordings embodying sound or seven or more audiovisual recordings, at any one time, is guilty of Class 4 offense; and

2. when the offense involves fewer than seven unauthorized recordings embodying sound or fewer than seven audiovisual recordings, at any one time, is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16A-3 Required Labeling; Penalties

A. It is unlawful for any person for commercial advantage or private financial gain to advertise, offer for sale or resale, sell, resell, lease or possess for any of these purposes any recording that the person knows does not contain the true name of the manufacturer in a prominent place on the cover, jacket or label of the recording.

B. Any person violating the provisions of Subsection A of this section:

1. when the offense involves seven or more unauthorized recordings embodying sound or seven or more audiovisual recordings, at any one time, is guilty of a Class 4 offense; and

2. when the offense involves fewer than seven unauthorized recordings embodying sound or fewer than seven audiovisual recordings, at any one time, is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16A-4 Unauthorized Recording of Live Performances; Penalties

A. It is unlawful for any person for commercial advantage or private financial gain to advertise, offer for sale, sell, rent, transport, cause the sale, resale, rental or transportation of or possess for one or more of these purposes a recording of a live performance that has been recorded or fixed without the consent of the owner.

B. Any person violating the provisions of Subsection A of this section:

1. when the offense involves seven or more unauthorized recordings embodying sound or seven or more audiovisual recordings, at any one time, is guilty of a Class 4 offense; and

2. when the offense involves fewer than seven unauthorized recordings embodying sound or fewer than seven audiovisual recordings, at any one time, is guilty of a Class 5 offense.

C. In the absence of a written agreement or law to the contrary, the performer of a live performance is presumed to own the rights to record or fix those sounds.

D. For the purposes of this section, a person who is authorized to maintain custody and control over business records that reflect whether the owner of the live performance consented to having the live performance recorded or fixed is a competent witness in a proceeding regarding the issue of consent.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16A-5 Exemptions

The provisions of this Article do not apply to:

A. any radio or television broadcaster who transfers any recording as part of, or in connection with, a radio or television broadcast transmission or for archival preservation;

B. any recording defined as a public record of any court, legislative body or proceedings of a public body, whether or not a fee is charged or collected for copies; or

C. any person who transfers a recording for his personal use and who does not derive any commercial advantage or private financial gain from the transfer.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16A-6 Construction

Nothing in this Article shall enlarge or diminish the rights of parties in private litigation.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16A-7 Forfeitures; Property Subject

Pursuant to the provisions of this Article, the following are subject to forfeiture:

A. all equipment, devices or articles that have been produced, reproduced, manufactured, distributed, dispensed or acquired in violation of this Article;

B. all devices, materials, products and equipment of any kind that are used or intended for use in producing, reproducing, manufacturing, processing, delivering, importing or exporting any item set forth in and in violation of this Article;

C. all books, business records, materials and other data that are used or intended for use in violation of this Article; and

D. money or negotiable instruments that are the fruit or instrumentality of the crime.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16A-8 Forfeitures; Procedure

The provisions of Article 44 of this Code apply to the seizure, forfeiture and disposal of property subject to forfeiture under this Article.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **ARTICLE 16B – UNLAWFUL RECORDING**

#### Sec. 8-16B-1 Title; Purpose

A. This Article may be cited as the Unlawful Recording Code.

B. The Tribal Council hereby finds that the privacy and confidentiality of the Pueblo's lands, people, and cultural and traditional practices and beliefs would be violated, and that the Pueblo would suffer substantial harm, by any recording of sound or images within specified areas of the Pueblo, or for commercial purposes, or of certain sounds, except as provided in this Code.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16B-2 Definitions

For purposes of this Code:

A. "Record" means to take down or register a sound or image in a form that can be kept and viewed, listened to, or repeated or copied at a later time. To record includes to take a photograph, whether on film or in digital or other format; to make a motion picture, whether on film, videotape or in digital or other form; to sketch, draw, or paint in any medium; or to record sound on tape or in any digital or other format.

B. "Santa Ana Lands" means all lands within the exterior boundaries of the Santa Ana Reservation, the Santa Ana Pueblo Grant, the so-called El Ranchito Grant, and any other lands owned by the Pueblo in fee subject to federal law restrictions on alienation or held by the United States in trust for the Pueblo.

C. "Tamaya" means the Pueblo's traditional village on the north side of the Rio Jemez, at the center of the Santa Ana Pueblo Grant.

D. “Recording Restricted Area” means the area of Santa Ana Lands located within three miles from the outermost structures comprising Tamaya.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16B-3 Unpermitted Recording Prohibited

A. It shall be unlawful for any person to record any image on or of Santa Ana Lands that includes any portion or feature of Tamaya, or that occurs within the Recording Restricted Area, without prior express permission from the Governor or his delegate or the Tribal Council.

B. It shall be unlawful for any person to record any sound that is part of any Pueblo traditional cultural activity, anywhere within Santa Ana Lands, without prior express permission from the Governor or his delegate or the Tribal Council.

C. It shall be unlawful for any person to record any image of Santa Ana Lands for any commercial purpose whatever, without prior express permission from the Governor or his delegate or the Tribal Council.

D. Nothing herein shall be deemed to prohibit any person from recording any image of a person or persons or objects within a residence within Tamaya, with the permission of a member of the family that owns such residence, even if such image includes as a minor and incidental part thereof a view out the window of such residence, so long as the view out the window is not the primary purpose of the image.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16B-4 Criminal Penalty

Any person who is convicted of violating any provision of Sec. 8-16B-3 shall be guilty of Unlawful Recording and may be fined up to five hundred dollars (\$500.00) for each such offense. For purposes of this Section, a group of still images recorded at a single locale shall be considered a single offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16B-5 Civil Sanctions; Seizure of Recording Devices

A. Any non-Indian who violates any provision of Sec. 8-16B-3 shall be deemed to be trespassing on Santa Ana Lands, and may be ejected from Santa Ana Lands by any law enforcement officer who observes such violation.

B. A law enforcement officer or a Pueblo official who observes any person violating any provision of Sec. 8-16B-3 may seize any recording device being used by such person in the course of such violation and shall turn it over to the Santa Ana Police Department. If the violator is a non-Indian, the device may be retained until the film, tape, paper or other medium containing the unlawful sound or images has been destroyed, or the unlawful sound or images have been



erased from the electronic medium, but then may be returned to the violator on request, at the violator's expense. If the violator is Indian, the device shall be retained as evidence until the conclusion of any criminal proceedings in Santa Ana Contemporary Court; but once such proceedings are concluded, or if no charges are filed within thirty (30) days of the violation, the device shall be returned to the violator on request, after the unlawful images or sound have been deleted or destroyed as described above.

C. Any person who violates paragraph C of Sec. 8-16B-3 shall be subject to a civil action for damages, in any court of competent jurisdiction, in which the Pueblo shall be entitled to recover all gross revenues received by such person, or by any person or entity on such person's behalf, from the commercial use of the unlawful image or images or sound recording, plus costs and reasonable attorneys' fees.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16B-6 Permission for Recording

A. Any person who records images or sound at the direction of the Governor or his delegate or under contract with the Pueblo is deemed to have prior express permission for such activity, provided the activity is carried out in accordance with the directive or the contract terms, as applicable.

B. Any person who wishes to record any image or sound that would otherwise be prohibited by this Code may apply to the Governor's office for permission for such activity, and shall provide information as to the images or sound to be recorded, the time and place and the purpose of such proposed recording, and any additional information required by the Governor's office. The Governor or his delegate may grant or deny any such request, or grant the request subject to conditions, as the Governor or his delegate deem appropriate, and the decision of the Governor or his delegate shall be final and non-appealable. In the event any such request is granted, the grant shall be in writing, and shall specify any applicable conditions. The applicant shall have the written permission in such person's possession at all times while engaged in the recording activity and shall carry out such activity strictly in accordance with the terms of the written permission. Any recording activity by such person on Santa Ana Lands beyond the scope of the written permission may be deemed a violation of this Code.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16B-7 Notice

The Pueblo shall post an appropriate sign giving reasonable notice of the principal terms of this Code at the intersection of U.S. 550 and the road to Tamaya, and shall make reasonable efforts to publish notice of this Code in other places of public accommodation on Santa Ana Lands; but provided that the absence of any such sign or other notice, or the failure of any person to see or read any such sign or other notice, shall not be a defense in any action to enforce any provision of this Code.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 16C – UNLAWFUL TAKING OF A VEHICLE OF MOTOR VEHICLE**

### **Sec. 8-16C-1 Unlawful Taking of a Vehicle or Motor Vehicle**

A. Unlawful taking of a vehicle or motor vehicle consists of a person taking any vehicle or motor vehicle intentionally and without consent of the owner. Whoever commits unlawful taking of a vehicle or motor vehicle is guilty of a

1. Class 4 offense for a first offense;
2. Class 3 offense for a second offense, and
3. Class 2 offense for a third or subsequent offense.

B. The consent of the owner of the vehicle or motor vehicle to its taking shall not in any case be presumed or implied because of the owner's consent on a previous occasion to the taking of the vehicle or motor vehicle by the same or a different person.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **Sec. 8-16C-2 Embezzlement of a Vehicle or Motor Vehicle**

A. Embezzlement of a vehicle or motor vehicle consists of a person embezzling or converting to the person's own use a vehicle or motor vehicle with which the person has been entrusted, with the fraudulent intent to deprive the owner of the vehicle or motor vehicle.

B. Whoever commits embezzlement of a vehicle or motor vehicle is guilty of a

1. Class 4 offense for a first offense;
2. Class 3 offense for a second offense, and
3. Class 2 offense for a third or subsequent offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **Sec. 8-16C-3 Fraudulently Obtaining a Vehicle or Motor Vehicle**

A. Fraudulently obtaining a vehicle or motor vehicle consists of a person intentionally misappropriating or taking a vehicle or motor vehicle that belongs to another person by means of fraudulent conduct, practices or representations.

B. Whoever commits fraudulently obtaining a vehicle or motor vehicle is guilty of a

1. Class 4 offense for a first offense;
2. Class 3 offense for a second offense, and
3. Class 2 offense for a third or subsequent offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16C-4 Receiving or Transferring Stolen Vehicles or Motor Vehicles

A. Receiving or transferring a stolen vehicle or motor vehicle consists of a person who, with intent to procure or pass title to a vehicle or motor vehicle that the person knows or has reason to believe has been stolen or unlawfully taken, receives or transfers possession of the vehicle or motor vehicle from or to another or who has in the person's possession any vehicle that the person knows or has reason to believe has been stolen or unlawfully taken. This section shall not apply to an officer of the law engaged at the time in the performance of the officer's duty as an officer.

B. Whoever commits receiving or transferring a stolen vehicle or motor vehicle is guilty of a

1. Class 4 offense for a first offense;
2. Class 3 offense for a second offense, and
3. Class 2 offense for a third or subsequent offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-16C-5 Injuring or Tampering with a Motor Vehicle

A. Injuring or tampering with a motor vehicle consists of a person, individually or in association with another person:

1. purposely and without authority from the owner starting or causing to be started the engine of any motor vehicle;
2. purposely and maliciously shifting or changing the starting device or gears of a standing motor vehicle to a position other than that in which they were left by the owner or driver of the motor vehicle;
3. purposely scratching or damaging the chassis, running gear, body, sides, top covering or upholstery of a motor vehicle that is the property of another;
4. purposely destroying any part of a motor vehicle or purposely cutting, mashing or marking or in any other way destroying or damaging any part, attachment, fastening or appurtenance of a motor vehicle without the permission of the owner;
5. purposely draining or starting the drainage of any radiator, oil tank or gas tank upon a motor vehicle without the permission of the owner;
6. purposely putting any metallic or other substance or liquid in the radiator, carburetor, oil tank, grease cup, oilers, lamps, gas tanks or machinery of the motor vehicle with the intent to injure or damage or impede the working of the machinery of the motor vehicle;
7. maliciously tightening or loosening any bracket, bolt, wire, nut, screw or other fastening on a motor vehicle; or
8. purposely releasing the brake upon a standing motor vehicle with the intent to injure the motor vehicle.

B. Whoever commits injuring or tampering with a motor vehicle is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-16C-6 Altering or Changing Engine or Other Numbers

A. No person shall, with fraudulent intent, deface, remove, cover, destroy or alter the manufacturer's serial number, engine number, decal or other distinguishing number or identification mark for which a dismantler's notification form has been processed through the New Mexico motor vehicle division, nor shall any person place or stamp any serial, engine, decal or other number or mark upon the vehicle except one assigned by the New Mexico motor vehicle division. Any violation of this section is a Class 4 offense.

B. This section shall not prohibit the restoration by an owner of an original serial, engine, decal or other number or mark when the restoration is made under permit issued by the New Mexico motor vehicle division nor prevent any manufacturer from placing, in the ordinary course of business, numbers, decals or marks upon vehicles or parts thereof.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**ARTICLE 17 – FIRE**

Sec. 8-17-1 Improper Handling of Fire

Improper handling of fire consists of:

A. setting fire, or causing or procuring a fire to be set to any inflammable vegetation or forest material, growing or being on the lands of another person and without the permission of the owner thereof;

B. allowing fire to escape or spread from the control of the person having charge thereof without using reasonable and proper precaution to prevent such fire from escaping or spreading;

C. burning any inflammable vegetation or forest material without using proper and reasonable precaution at all times to prevent the escape of such fire;

D. leaving any campfire burning and unattended upon Pueblo Lands; or

E. causing a fire to be started in any inflammable vegetation or forest material by means of any lighted cigar, cigarette, match or other manner, and leaving such fire unquenched.

Provided, nothing herein shall constitute improper handling of fire where the fire is a backfire set for the purpose of stopping the progress of a fire then actually burning.

Whoever commits improper handling of fire is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-17-2 Arson and Negligent Arson

A. Arson consists of a person maliciously or willfully starting a fire or causing an explosion with the purpose of destroying or damaging:

1. a building, occupied structure or property of another person;
2. a bridge, utility line, fence or sign; or
3. any property, whether the person's own property or the property of another person, to collect insurance for the loss.

B. Whoever commits arson when the damage is two hundred fifty dollars (\$250) or less is guilty of a Class 6 offense.

C. Whoever commits arson when the damage is over two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500) is guilty of a Class 5 offense.

D. Whoever commits arson when the damage is over five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500) is guilty of a Class 4 offense.

E. Whoever commits arson when the damage is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a Class 3 offense

F. Whoever commits arson when the damage is over twenty thousand dollars (\$20,000) is guilty of a Class 2 offense.

G. Negligent arson consists of a person recklessly starting a fire or causing an explosion, whether on the person's property or the property of another person, and thereby directly:

1. causing the death or bodily injury of another person; or
2. damaging or destroying a building or occupied structure of another person.

H. Whoever commits negligent arson is guilty of a Class 4 offense.

I. As used in this section, "occupied structure" includes a trailer, car, structure or place adapted for the transportation or storage of property, for overnight accommodations of persons or for carrying on business therein, whether or not a person is actually present.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-17-3 Aggravated Arson

Aggravated arson consists of the willful or malicious damaging by any explosive substance or the willful or malicious setting fire to any bridge, vehicle, pipeline, utility line, communication line or structure, railway structure, private or public building, dwelling or other structure, causing a person great bodily harm.

Whoever commits aggravated arson is guilty of a Class 2 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 18 – ANIMALS**

### **Sec. 8-18-1 Cruelty to Animals; Extreme Cruelty to Animals; Penalties; Exceptions**

- A. As used in this section, “animal” does not include insects or reptiles.
- B. Cruelty to animals consists of a person:
  - 1. negligently mistreating, injuring, killing without lawful justification or tormenting an animal; or
  - 2. abandoning or failing to provide necessary sustenance to an animal under that person’s custody or control.
- C. As used in Subsection B of this section, “lawful justification” means:
  - 1. humanely destroying a sick or injured animal; or
  - 2. protecting a person or animal from death or injury due to an attack by another animal.
- D. Whoever commits cruelty to animals is guilty of a Class 5 offense. Upon a fourth or subsequent conviction for committing cruelty to animals, the offender is guilty of a Class 4 offense.
- E. Extreme cruelty to animals consists of a person:
  - 1. Intentionally or maliciously torturing, mutilating, injuring or poisoning an animal; or
  - 2. maliciously killing an animal.
- F. Whoever commits extreme cruelty to animals is guilty of a Class 4 offense.
- G. If a child is adjudicated of cruelty to animals, the court shall order an assessment and any necessary psychological counseling or treatment of the child.
- H. The provisions of this section do not apply to:
  - 1. fishing, hunting, falconry, taking and trapping that is otherwise lawful;
  - 2. the practice of veterinary medicine;
  - 3. rodent or pest control;
  - 4. the treatment of livestock and other animals used on farms and ranches for the production of food, fiber or other agricultural products, when the treatment is in accordance with commonly accepted agricultural animal husbandry practices;

- by law;
5. the use of commonly accepted rodeo practices, unless otherwise prohibited
  6. engaging in any approved Pueblo rituals involving use of live animals;
  7. other similar activities not otherwise prohibited by law.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-18-2 Seizure of Animals; Notice

A. A law enforcement officer who reasonably believes that the life or health of an animal is endangered due to cruel treatment may apply to the Contemporary Court for a warrant to seize the animal.

B. If the court finds probable cause that the animal is being cruelly treated, the court shall issue a warrant for the seizure of the animal. The court shall also schedule a hearing on the matter as expeditiously as possible within thirty days unless good cause is demonstrated by the Pueblo for a later time.

C. Written notice regarding the time and location of the hearing shall be provided to the owner of the seized animal.

D. If the owner of the animal cannot be determined, a written notice regarding the circumstances of the seizure shall be conspicuously posted where the animal is seized at the time the seizure occurs.

E. At the option and expense of the owner, the seized animal may be examined by a veterinarian of the owner's choice.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-18-3 Disposition of Seized Animals

A. If the court finds that a seized animal is not being cruelly treated and that the animal's owner is able to provide for the animal adequately, the court shall return the animal to its owner.

B. If the court finds that a seized animal is being cruelly treated or that the animal's owner is unable to provide for the animal adequately, the court shall hold a hearing to determine the disposition of the animal.

C. The Pueblo may petition the court to request that the animal's owner may be ordered to post security with the court to indemnify the costs incurred to care and provide for the seized animal pending the disposition of any criminal charges of committing cruelty to animals pending against the animal's owner.

D. The court shall determine the amount of security while taking into consideration all of the circumstances of the case including the owner's ability to pay and may conduct

periodic reviews of its order. If the posting of security is ordered, the Pueblo may, with permission of the court, draw from the security to indemnify the costs incurred to care and provide for the seized animal pending disposition of the criminal charges.

E. If the owner of the animal does not post security within fifteen days after the issuance of the order, or if, after reasonable and diligent attempts the owner cannot be located, the animal may be deemed abandoned and relinquished to the Pueblo for adoption or humane destruction.

F. Nothing in this section shall prohibit an owner from voluntarily relinquishing an animal to the Pueblo. A voluntary relinquishment shall not preclude further prosecution of any criminal charges alleging that the owner has committed felony cruelty to animals.

G. Upon conviction, the court shall place the animal with the Pueblo for placement or for humane destruction.

H. As used in this section, “livestock” means all domestic or domesticated animals that are used or raised on a farm or ranch and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae but does not include canine or feline animals.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-18-4 Costs

A. Upon conviction, a defendant shall be liable for the reasonable cost of boarding the animal and all necessary veterinary examinations and care provided to the animal. The amount of these costs shall be offset by the security posted pursuant to court order. Unexpended security funds shall be returned to the defendant.

B. In the absence of a conviction, the seizing agency shall bear the costs of boarding the animal and all necessary veterinary examinations and care of the animal during the pendency of the proceedings, return the animal, if not previously relinquished, and all of the security posted pursuant to court order.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-18-5 Unlawful Disposition of Animal

Unlawful disposition of animal consists of:

A. skinning or removing without the permission of the owner any part of the hide of any neat cattle found dead;

B. abandoning any livestock without giving reasonable notice to the owner, where the livestock has been entrusted by the owner to such person for the herding, care or safekeeping upon a contract for a valuable consideration;



- C. taking any livestock for use or work, without the consent of the owner;
- D. driving or leading any animal being the property of another from its usual range, without the consent of the owner;
- E. contracting, selling or otherwise disposing of any animal, which a person has in his possession or under his control on shares or under contract, without the consent of the owner of such animal; or
- F. knowingly buying, taking or receiving from any person having in his possession, or under his control, any animal on shares or under contract, without the consent of the owner of such animal.

Whoever commits unlawful disposition of animal is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-18-6 Illegal Confinement of Animals

Illegal confinement of animals consists of:

- A. detaining for more than two (2) hours for the purpose of milking any cow, without the permission of the owner;
- B. taking and detaining any bull for the purpose of improving livestock, without the consent of the owner;
- C. intentionally separating offspring of livestock from the mother, unless branded. Provided that, when milk cows, which are actually used to furnish milk for household or dairy purposes, have calves, that are unbranded, such young animals may be separated from their mother and enclosed; or
- D. confining, or in any manner interfering with the freedom of, or selling, or offering to sell, any freshly branded animal, unless such animal has been previously branded with an older and duly recorded brand for which the person has a legally executed bill of sale from the owner of such brand or unless such animals are with their mother, or unless such animals are the calves of milk cows when such cows are actually used to furnish milk for household purposes or for carrying on a dairy; but in every such case the person, firm or corporation, separating calves from their mother for either of these purposes shall, upon the demand of any sheriff, inspector or other officer, produce, in a reasonable time, the mother of each of such calves so that interested parties may ascertain if the cow does or does not claim and suckle such calf.

Whoever commits illegal confinement of animals is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-18-7 Transporting Stolen Livestock

Transporting stolen livestock consists of knowingly transporting or carrying any stolen or unlawfully possessed livestock or any unlawfully possessed game animal, or any parts thereof.

Whoever commits transporting stolen livestock is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-18-8 Misrepresentation of Pedigree

Misrepresentation of pedigree consists of either the giving, obtaining, misrepresenting or exhibiting of any type of registry certificate or transfer certificate, pertaining to the pedigree registry of any animal, knowing such certificate to be false or misleading, or to have been secured by means of false pretenses or false representations.

Whoever commits misrepresentation of pedigree is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-18-9 Killing Unbranded Cattle; Killing, Without Bill of Sale, Cattle Bearing Brand of Another Person; Penalty

Any person, firm or corporation, who shall kill or cause to be killed, for sale or use any unbranded neat cattle, or any cattle on which the brand has not peeled off and fully healed, unless such cattle shall have an older and duly recorded brand; or shall kill, or cause to be killed for sale or use any neat cattle having a brand not legally owned by such person, firm or corporation, without having taken a duly acknowledged bill of sale for the same from the owner thereof, shall be deemed guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-18-10 Dog Fighting and Cockfighting; Penalty

A. It is unlawful for any person to cause, sponsor, arrange, hold or participate in a fight between dogs or cocks for the purpose of monetary gain or entertainment. Participation in a fight between dogs or cocks for the purpose of monetary gain or entertainment consists of an adult knowingly:

1. being present at a dog fight without attempting to interfere with or stop the contest; or
2. owning or equipping one of the participating dogs or cocks with knowledge of the contest.

B. It is unlawful to train, equip or sponsor a dog or cock for the purpose of having it participate in a fight with another dog or cock, respectively, for monetary gain or entertainment.

C. Any person violating the provisions of Subsection A or B of this section, as it pertains to dogs, is guilty of a Class 4 offense.

D. Any person violating the provisions of Subsection A or B of this section as it pertains to cocks:

1. upon a first conviction, is guilty of a Class 6 offense
2. upon a second conviction, is guilty of a Class 5 offense; and
3. upon a third or subsequent conviction, is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-18-11 Unlawful Tripping of an Equine; Exception

A. Unlawful tripping of an equine consists of intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment.

B. The provisions of Subsection A of this section do not apply to laying an equine down for medical or identification purposes.

C. As used in this section, “equine” means a horse, pony, mule, donkey or hinny.

D. Whoever commits unlawful tripping of an equine is guilty of a Class 5 offense.

E. Whoever commits unlawful tripping of an equine that causes the maiming, crippling or death of the equine is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-18-12 Injury to Livestock

A. Injury to livestock consists of willfully and maliciously poisoning, killing or injuring livestock that is the property of another.

B. As used in this section, “livestock” means cattle, sheep, buffalo, horses, mules, donkeys, hinnies, goats, swine and ratites.

C. Whoever commits injury to livestock is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-18-13 Injury to a Police Dog, Police Horse or Fire Dog; Harassment of a Police Dog, Police Horse or Fire Dog

A. As used in this section:

1. “fire dog” means a dog used by a fire department for the primary purpose of aiding in the detection of flammable materials or the investigation of fires;

2. “police dog” means a dog used by a law enforcement agency that is specially trained for law enforcement work in the areas of tracking, suspect apprehension, crowd control or drug or explosives detection.

B. Injury to a police dog or fire dog consists of willfully and with intent to injure or prevent the lawful performance of its official duties:

1. striking, beating, kicking, cutting, stabbing, shooting or administering poison or any other harmful substance to a police dog, police horse or fire dog; or

2. throwing or placing an object or substance in a manner that is likely to produce injury to a police dog, police horse or fire dog.

C. Whoever commits injury to a police dog or fire dog when the injury causes the animal minor physical injury or pain is guilty of a Class 6 offense.

D. Whoever commits injury to a police dog or fire dog when the injury causes the animal serious physical injury or death or directly causes the destruction of the animal is guilty of a Class 4 offense.

E. A person convicted of injury to a police dog or fire dog may be ordered to make restitution for the animal’s veterinary bills or replacement costs of the animal if it is permanently disabled, killed or destroyed.

F. Harassment of a police dog or fire dog consists of a person willfully and maliciously interfering with or obstructing a police dog or fire dog by frightening, agitating, harassing or hindering the animal.

G. Whoever commits harassment of a police dog or fire dog is guilty of a Class 5 offense.

H. Whoever commits harassment of a police dog or fire dog that results in bodily injury to a person not an accomplice to the criminal offense is guilty of a Class 5 offense and shall be sentenced pursuant to the provisions of this Code.

I. It is an affirmative defense to a prosecution brought pursuant to the provisions of this section that a police dog or fire dog was not handled in accordance with well-recognized national handling procedures or was handled in a manner contrary to its own department’s handling policies and procedures.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-18-14 Coyote; Killing Contests Prohibited; Definition; Penalties

A. It is unlawful for a person to organize, cause, sponsor, arrange, hold or participate in a coyote-killing contest.

B. As used in this section, “coyote-killing contest” means an organized or sponsored competition with the objective of killing coyotes for prizes or entertainment.

C. Organizing, causing, sponsoring, arranging or holding a coyote-killing contest consists of a person knowingly:

1. planning, organizing or enticing a person to participate in a coyote-killing contest; or
2. providing the venue for a coyote-killing contest.

D. Participation in a coyote-killing contest consists of a person knowingly taking part in a coyote-killing contest.

E. A person who organizes, causes, sponsors, arranges or holds a coyote-killing contest is guilty of a Class 5 Offense.

F. A person who participates in a coyote-killing contest is guilty of a Class 6 Offense.

G. Nothing in this section shall be construed to prohibit a person from protecting a person or property or a lawful game commissioner from carrying out their statutory authority in a non-coyote-killing contest setting.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 19 – GAMBLING**

*[Reserved]*

## **ARTICLE 20 – CRIMES AGAINST PUBLIC PEACE**

### **Sec.8-20-1 Disorderly Conduct**

Disorderly conduct consists of:

A. engaging in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to disturb the peace; or

B. maliciously disturbing, threatening or, in an insolent manner, intentionally touching any house occupied by any person.

Whoever commits disorderly conduct is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-20-2 Public Affray

Public affray consists of two or more persons voluntarily or by agreement engaging in any fight or using any blows or violence toward each other in an angry or quarrelsome manner in any public place, to the disturbance of others.

Whoever commits public affray is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-20-3 Loitering of Minors

Loitering of minors consists of the owner or operator of any license liquor establishment permitting a person under the age of twenty-one years to attend, frequent or loiter in or about such premises without being accompanied by the parent or guardian of the person.

Whoever commits loitering of minors is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-20-4 Dueling

Dueling consists of any person:

- A. conveying by written or oral message a challenge to any other person to fight a duel with any deadly weapon, and whether or not such duel ensues;
- B. accepting a challenge from another person to fight a duel with any deadly weapon, and whether or not such duel ensues;
- C. engaging in or fighting a duel with any deadly weapon; or
- D. aiding, encouraging or seconding either party to a duel and being present at such duel when deadly weapons are used.

Whoever commits dueling is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-20-5 Use of Telephone to Terrify, Intimidate, Threaten, Harass, Annoy or Offend;  
Penalty

A. It shall be unlawful for any person, with intent to terrify, intimidate, threaten, harass, annoy or offend, to telephone another and use any obscene, lewd or profane language or suggest any lewd, criminal or lascivious act, or threaten to inflict injury or physical harm to the person or property of any person. It shall also be unlawful for any person to attempt by telephone to extort money or other thing of value from any other person, or to otherwise disturb by

repeated anonymous telephone calls the peace, quiet or right of privacy of any other person at the place where the telephone call or calls were received, or to maliciously make a telephone call, whether or not conversation ensues, with intent to annoy or disturb another, or to disrupt the telecommunications of another.

B. The use of obscene, lewd or profane language or the making of a threat or statement as set forth in Subsection A shall be prima facie evidence of intent to terrify, intimidate, threaten, harass, annoy or offend.

C. Any offense committed by use of a telephone as set forth in this section shall be deemed to have been committed at either the place where the telephone call or calls originated or at the place where the telephone call or calls were received.

D. Whosoever violates this section is guilty of a Class 5 offense, unless such person has previously been convicted of such offense or of an offense under the laws of a state, the United States, the Pueblo, or another tribe that would have been an offense under this section if committed on the Pueblo, in which case such person is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-20-6 Interference with Members of Pueblo Staff or Pueblo Officials; Trespass; Damage to Property; Penalties

A. No person shall, at or in any building or other facility or property owned, operated or controlled by the Pueblo, willfully deny to Pueblo staff or Pueblo officials:

1. lawful freedom of movement within the building or facility or the land on which it is situated;
2. lawful use of the building or facility or the land on which it is situated; or
3. the right of lawful ingress and egress to the building or facility or the land on which it is situated.

B. No person shall, at or in any building or other facility or property owned, operated or controlled by the Pueblo, willfully impede Pueblo staff or a Pueblo official through the use of restraint, abduction, coercion or intimidation or when force and violence are present or threatened.

C. No person shall willfully refuse or fail to leave the property of, or any building or other facility owned, operated or controlled by the Pueblo when requested to do so by a lawful custodian of the building, facility or property if the person is committing, threatens to commit or incites others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions of the property, building or facility.

D. No person shall willfully interfere with the educational process of any public or private school by committing, threatening to commit or inciting others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions of a public or private school.

E. Nothing in this section shall be construed to prevent lawful assembly and peaceful and orderly petition for the redress of grievances.

F. Any person who violates any of the provisions of this section shall be deemed guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-20-7 Bomb Scares

A. Making a bomb scare consists of falsely and maliciously stating to another person that a bomb or other explosive has been placed in such a position that property or persons are likely to be injured or destroyed.

B. Whoever commits making a bomb scare is guilty of a Class 4 offense.

C. A court may order a person convicted for the offense of making a bomb scare to reimburse the victim of the offense for economic harm caused by that offense.

D. As used in this section, “economic harm” means all direct, incidental and consequential financial harm suffered by a victim of the offense of making a bomb scare. “Economic harm” includes:

1. wages, salaries or other compensation lost as a result of the commission of the offense of making a bomb scare;
2. the cost of all wages, salaries or other compensation paid to employees for time that those employees are prevented from working as a result of the commission of the offense of making a bomb scare; and
3. overhead costs incurred for the period of time that a business is shut down as a result of the commission of the offense of making a bomb scare.

E. This section shall not be construed to limit a court’s authority to order restitution to a victim of the offense of making a bomb scare pursuant to other provisions of law.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-20-8 Interference with Athletic Event

Interference with an athletic event consists of intentionally throwing any object on or across the field of play of an athletic event with the intent to interfere with the normal conduct of that event while the contestants of that event are on that field. As used in this section, “athletic event” means a scheduled sports event for which an admission fee is charged to the public.

Any person other than an official or a contestant of an athletic event who commits interference with an athletic event is guilty of a Class 6 offense.



## **ARTICLE 21 – DEMONSTRATIONS AT FUNERALS AND MEMORIAL SERVICES**

### **Sec. 8-21-1    Definitions**

As used in this Article:

A.     “funeral” means the ceremonies, rituals, processions and memorial services held at a funeral site in connection with the viewing, burial, cremation or memorial of or wake for a deceased person;

B.     “funeral site” means a church, mortuary, cemetery, grave site, mausoleum or other place at which a funeral is being conducted or is scheduled to be conducted within the next sixty minutes or has been conducted within the last sixty minutes; and

C.     “targeted residential picketing” includes the following acts:

1.     marching, standing or patrolling by one or more persons directed solely at a particular residential building in a manner that adversely affects the safety, security or privacy of an occupant of the building; or

2.     marching, standing or patrolling by one or more persons that prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.

### **Sec. 8-21-2    Prohibited Acts**

A person shall not, with knowledge of the existence of a funeral or funeral site:

A.     engage in any loud singing, playing of music, chanting, whistling, yelling or noisemaking with or without noise amplification, including bullhorns, auto horns and microphones within five hundred feet of any ingress or egress of that funeral site, when the volume of such singing, music, chanting, whistling, yelling or noisemaking is audible at and disturbing to the peace and good order of a funeral at that funeral site;

B.     direct abusive epithets or make any threatening gesture that the person knows or reasonably should know is likely to provoke a violent reaction by another person;

C.     display within five hundred feet of any ingress or egress of that funeral site any visual images that convey fighting words or actual threats against another person;

D.     knowingly obstruct, hinder, impede or block another person’s access to or egress from that funeral site or a facility containing that funeral site, except that the owner or occupant of property may take lawful actions to exclude others from that property;

E. knowingly obstruct, hinder, impede or block the progress of a vehicle participating in a procession to or from a funeral site; or

F. knowingly engage in targeted residential picketing at the home or domicile of any surviving member of the deceased person's family or household on the date of the funeral.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-21-3 Penalties

Any person who violates Sec. 8-21-2 of this Title is guilty:

- A. for the first offense, guilty of a Class 6 offense;
- B. for the second offense, guilty of a Class 5 offense; and
- C. for the third and subsequent offenses, guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-21-4 Injunctive Relief

In addition to the criminal penalties provided in Sec. 8-21-3, the court may enjoin conduct prohibited in Sec. 8-21-2 if there is credible evidence that a person is likely to violate Sec. 8-21-2. Any surviving member of the deceased person's immediate family who is threatened with loss or injury by reason of a violation described in Sec. 8-21-2 is entitled to sue for and have injunctive relief against any damage or threatened loss or injury by reason of a violation thereof.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **ARTICLE 22 – INTERFERENCE WITH LAW ENFORCEMENT**

#### Sec. 8-22-1 Resisting, Evading or Obstructing an Officer

A. Resisting, evading or obstructing an officer consists of:

- 1. knowingly obstructing, resisting or opposing any officer of the Pueblo or any other duly authorized person serving or attempting to serve or execute any process or any rule or order of the Contemporary Court or any other judicial writ or process;
- 2. intentionally fleeing, attempting to evade or evading an officer of the Pueblo when the person committing the act of fleeing, attempting to evade or evasion has knowledge that the officer is attempting to apprehend or arrest him;
- 3. willfully refusing to bring a vehicle to a stop when given a visual or audible signal to stop, whether by hand, voice, emergency light, flashing light, siren or other signal, by a uniformed officer in an appropriately marked police vehicle; or

4. resisting or abusing any judge or officer of the Pueblo in the lawful discharge of his or her duties.

B. For this Section 8-22-1 only, “officer of the Pueblo” shall mean the Governor, the Lt. Governor, a Tribal Sheriff when acting under the direction or authority of the Governor or Lt. Governor, or a law enforcement officer.

C. Whoever commits resisting, evading or obstructing an officer is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-22-1.1 Aggravated Fleeing a Law Enforcement Officer

A. Aggravated fleeing a law enforcement officer consists of a person willfully and carelessly driving his vehicle in a manner that endangers the life of another person after being given a visual or audible signal to stop, whether by hand, voice, emergency light, flashing light, siren or other signal, by a uniformed law enforcement officer in an appropriately marked law enforcement vehicle in pursuit.

B. Whoever commits aggravated fleeing a law enforcement officer is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-22-2 Refusing to Aid an Officer

A. Refusing to aid an officer consists of refusing to assist any peace officer in the preservation of the peace when called upon by such officer in the name of the Pueblo.

B. Whoever commits refusing to aid an officer is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-22-2.1 Entry into Domestic Violence Safe House or Shelter; Search Warrant

A. It is not a violation of Sec. 8-22-1 or Sec. 8-22-4 for a person who is a member, resident, employee or volunteer of or is otherwise associated with a domestic violence safe house or shelter to request that a law enforcement officer show a valid search warrant before allowing the officer to enter the domestic violence safe house or shelter. Nothing in this section shall prevent a law enforcement officer from executing a valid search warrant.

B. Prior to attempting to serve an arrest warrant within a domestic violence safe house or shelter, a law enforcement officer shall obtain a valid search warrant, unless exigent circumstances exist necessitating immediate entry.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### Sec. 8-22-3 Concealing Identity

Concealing identity consists of concealing one's true name or identity, or disguising oneself with intent to obstruct the due execution of the law or with intent to intimidate, hinder or interrupt any person in a legal performance of his duty or the exercise of his rights under the laws of the Pueblo.

Whoever commits concealing identity is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### Sec. 8-22-4 Harboring or Aiding a Felony Offender

A. Harboring or aiding a felony offender consists of any person, not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister by consanguinity or affinity, who knowingly conceals any offender or gives such offender any other aid, knowing that he has committed a felony offense, with the intent that he escape or avoid arrest, trial, conviction or punishment.

B. In a prosecution under this section it shall not be necessary to aver, nor on the trial to prove, that the principal felony offender has been either arrested, prosecuted or tried.

C. Whoever commits harboring or aiding a felony offender is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### Sec. 8-22-5 Tampering with Evidence

A. Tampering with evidence consists of destroying, changing, hiding, placing or fabricating any physical evidence with intent to prevent the apprehension, prosecution or conviction of any person or to throw suspicion of the commission of a crime upon another.

B. Whoever commits tampering with evidence:

1. if the highest crime for which tampering with evidence is committed is a Class 1 or Class 2 offense, is guilty of a Class 3 offense;
2. if the highest crime for which tampering with evidence is committed is a Class 3 or Class 4 offense, is guilty of a Class 4 offense;
3. if the highest crime for which tampering with evidence is committed is a Class 5 or Class 6 offense, the person committing tampering with evidence is guilty of Class 6 offense; and
4. if the highest crime for which tampering with evidence is committed is indeterminate, the person committing tampering with evidence is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-22-6    Compounding a Crime

Compounding a crime consists of knowingly agreeing to take anything of value upon the agreement or understanding, express or implied, to compound or conceal a crime or to abstain from a prosecution therefor, or to withhold any evidence thereof.

For purposes of this section, a person may be prosecuted and convicted of compounding a crime though the person guilty of the original crime has not been charged, indicted or tried.

Whoever commits compounding a crime is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-22-7    Unlawful Rescue

Unlawful rescue consists of intentionally, and without lawful authority, rescuing any person lawfully in custody or confinement.

Whoever commits unlawful rescue is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-22-8    Escape from Jail

Escape from jail consists of any person who shall have been lawfully committed to any jail, escaping or attempting to escape from such jail.

Whoever commits escape from jail is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-22-8.1    Escape from a Community Custody Release Program

A.     Escape from a community custody release program consists of a person, excluding a person on probation or parole, who has been lawfully committed to a judicially approved community custody release program, including a day reporting program, an electronic monitoring program, a day detention program or a community tracking program, escaping or attempting to escape from the community custody release program.

B.     Whoever commits escape from a community custody release program, when the person was committed to the program for a felony offense, is guilty of a Class 4 offense.

C.     Whoever commits escape from a community custody release program, when the person was committed to the program for a Class 5 or Class 6 offense, is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-22-8.2 Escape from a Secure Residential Treatment Facility

A. Escape from a secure residential treatment facility consists of a person lawfully committed for a criminal offense to a secure residential treatment facility escaping from the facility.

B. Whoever commits escape from a secure residential treatment facility is guilty of a Class 5 offense.

C. As used in this section, “secure residential treatment facility” means a secure facility not located within a correctional facility or detention center in which residents are being treated for substance abuse problems, and personnel and physical barriers prevent the residents from leaving.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-22-9 Escape from Custody of a Peace Officer

Escape from custody of a peace officer consists of any person who shall have been placed under lawful arrest for the commission or alleged commission of any felony offense, unlawfully escaping or attempting to escape from the custody or control of any peace officer.

Whoever commits escape from custody of a peace officer is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-22-10 Assisting Escape

Assisting escape consists of:

A. intentionally aiding any person confined or held in lawful custody or confinement to escape; or

B. any officer, jailer or other employee, intentionally permitting any prisoner in his custody to escape.

Whoever commits assisting escape is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-22-11 Furnishing Articles for Prisoner’s Escape

Furnishing articles for prisoner’s escape consists of:

A. intentionally giving to any person in lawful custody or confinement any deadly weapon or explosive substance, without the express consent of the officer in charge of such place of confinement; or

B. intentionally giving to any person in lawful custody or confinement any disguise, instrument, tool or other thing useful to aid any prisoner to affect an escape, with intent to assist a prisoner to escape from custody. Whoever commits furnishing articles for a prisoner's escape is guilty of a Class 2 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-22-12 Furnishing Drugs or Liquor to a Prisoner

Furnishing drugs or liquor to a prisoner consists of directly or indirectly furnishing any narcotic drug or intoxicating liquor to any person held in lawful custody or confinement, unless such narcotic drug or intoxicating liquor is furnished pursuant to the direction or prescription of a regularly licensed physician attending such person or penal facility.

Whoever commits furnishing drugs or liquor to a prisoner is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-22-13 Maintaining Male and Female Prisoners Together

Maintaining male and female prisoners together consists of any officer, jailer or guard, keeping male and female prisoners in the same cell or room, unless such prisoners are man and wife.

Whoever commits maintaining male and female prisoners together is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-22-14 Possession of Deadly Weapon or Explosive by Prisoner

Possession of deadly weapon or explosive by prisoner in lawful custody consists of any inmate of a penal institution, reformatory, jail or prison farm or ranch possessing any deadly weapon or explosive substance.

Whoever commits possession of deadly weapon or explosive by prisoner is guilty of a Class 2 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-22-15 Assault by Prisoner

Assault by prisoner consists of intentionally:

A. placing an officer or employee of any penal institution, reformatory, jail or prison farm or ranch, or a visitor therein, in apprehension of an immediate battery likely to cause death or great bodily harm;

B. causing or attempting to cause great bodily harm to an officer or employee of any penal institution, reformatory, jail or prison farm or ranch, or a visitor therein; or

C. confining or restraining an officer or employee of any penal institution, reformatory, jail or prison farm or ranch, or a visitor therein, with intent to use such person as a hostage.

Whoever commits assault by prisoner is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-22-16 Encouraging Violation of Probation, Parole or Bail

Encouraging violation of probation, parole or bail consists of intentionally aiding or encouraging a person known by him to be on parole, probation or bail to abscond or to violate a term or condition of his probation, parole or bail.

Whoever commits encouraging violation of probation, parole or bail is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-22-17 Unlawful Assault on any Jail

Unlawful assault on any jail consists of any person or group of persons assaulting or attacking any jail, prison or other building or place of confinement of prisoners held in lawful custody or confinement.

Whoever commits unlawful assault on any jail, prison or other building or place of confinement of prisoners held in lawful custody or confinement is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-22-18 Assault Upon Peace Officer

A. Assault upon a peace officer consists of:

1. an attempt to commit a battery upon the person of a peace officer while he is in the lawful discharge of his duties; or
2. any unlawful act, threat or menacing conduct which causes a peace officer while he is in the lawful discharge of his duties to reasonably believe that he is in danger of receiving an immediate battery.

B. Whoever commits assault upon a peace officer is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.



Sec. 8-22-19 Aggravated Assault Upon Peace Officer

A. Aggravated assault upon a peace officer consists of:

1. unlawfully assaulting or striking at a peace officer with a deadly weapon while he is in the lawful discharge of his duties;
2. committing assault by threatening or menacing a peace officer who is engaged in the lawful discharge of his duties by a person wearing a mask, hood, robe or other covering upon the face, head or body, or while disguised in any manner so as to conceal identity; or
3. willfully and intentionally assaulting a peace officer while he is in the lawful discharge of his duties with intent to commit any felony offense.

B. Whoever commits aggravated assault upon a peace officer is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-22-20 Assault with Intent to Commit Violent Felony Offense Upon Peace Officer

A. Assault with intent to commit a violent felony offense upon a peace officer consists of any person assaulting a peace officer while he is in the lawful discharge of his duties with intent to kill the peace officer.

B. Whoever commits assault with intent to commit a violent felony upon a peace officer is guilty of a Class 2 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-22-21 Battery Upon Peace Officer

A. Battery upon a peace officer is the unlawful, intentional touching or application of force to the person of a peace officer while he is in the lawful discharge of his duties, when done in a rude, insolent or angry manner.

B. Whoever commits battery upon a peace officer is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-22-22 Aggravated Battery Upon Peace Officer

A. Aggravated battery upon a peace officer consists of the unlawful touching or application of force to the person of a peace officer with intent to injure that peace officer while he is in the lawful discharge of his duties.

B. Whoever commits aggravated battery upon a peace officer, inflicting an injury to the peace officer which is not likely to cause death or great bodily harm, but does cause painful

temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a Class 4 offense.

C. Whoever commits aggravated battery upon a peace officer, inflicting great bodily harm, or does so with a deadly weapon or in any manner whereby great bodily harm or death can be inflicted, is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-22-23 Assisting in Assault Upon Peace Officer

Every person who assists or is assisted by one or more other persons to commit a battery upon any peace officer while he is in the lawful discharge of his duties is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-22-24 Disarming a Peace Officer

A. Disarming a peace officer consists of knowingly:

1. removing a firearm or weapon from the person of a peace officer when the officer is acting within the scope of his duties; or
2. depriving a peace officer of the use of a firearm or weapon when the officer is acting within the scope of his duties.

B. The provisions of Subsection A of this act shall not apply when a peace officer is engaged in criminal conduct.

C. Whoever commits disarming a peace officer is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **ARTICLE 23 – MISCONDUCT BY OFFICIALS**

#### Sec. 8-23-1 Demanding Illegal Fees

Demanding illegal fees consists of any Pueblo official or Pueblo employee knowingly asking or accepting anything of value greater than that fixed or allowed by law for the execution or performance of any service or duty.

Whoever commits demanding illegal fees is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-23-2 Paying or Receiving Pueblo Money for Services not Rendered

Paying or receiving Pueblo money for services not rendered consists of knowingly making or receiving payment or causing payment to be made from Pueblo funds where such payment purports to be for wages, salary or remuneration for personal services which have not in fact been rendered.

Nothing in this section shall be construed to prevent the payment of Pueblo funds where such payments are intended to cover lawful remuneration to Pueblo officials or Pueblo employees for vacation periods or absences from employment because of sickness, or for other lawfully authorized purposes.

Whoever commits paying or receiving Pueblo money for services not rendered is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-23-3 Making or Permitting False Voucher

Making or permitting false voucher consists of knowingly, intentionally or willfully making, causing to be made or permitting to be made, a false material statement or forged signature upon any voucher, or invoice supporting a voucher, with intent that the voucher or invoice shall be relied upon for the expenditure of Pueblo money.

Whoever commits making or permitting false voucher is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-23-4 Unlawful Interest in a Pueblo Contract

Unlawful interest in a Pueblo contract consists of:

A. any Pueblo official or Pueblo employee receiving anything of value, directly or indirectly, from either a seller or a seller's agents, or a purchaser or a purchaser's agents in connection with the sale or purchase of securities, goods, leases, lands or anything of value by the Pueblo.

B. any seller, or his agents, or a purchaser, or his agents, offering to pay or paying anything of value directly or indirectly to a Pueblo official or Pueblo employee in connection with the sale or purchase of securities or goods by the Pueblo.

C. Any person violating the provisions of Subsection B of this section, where such violation forms the basis for prosecution and conviction of a Pueblo official or Pueblo employee, shall be disqualified from transacting any business with the Pueblo for a period of five years from the date of such violation.

D. Nothing in this section shall prohibit a Pueblo official or Pueblo employee from receiving his regular remuneration for services rendered to the Pueblo in connection with the aforementioned transactions.

E. Whoever commits unlawful interest in Pueblo contracts where the value received is fifty dollars (\$50.00) or less is guilty of a Class 5 offense. Whoever commits unlawful interest in Pueblo contracts where the value received is more than fifty dollars (\$50.00) is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### **Sec. 8-23-5 Civil Damages for Engaging in Illegal Acts**

In addition to any criminal penalties imposed by Sec. 8-23-4, a Pueblo official or Pueblo employee convicted of violating such section shall be liable for anything of value received by him to the Pueblo. Action for recovery of amounts under this section shall be brought in the Contemporary Court in the name of the Pueblo.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **ARTICLE 24 – BRIBERY**

#### **Sec. 8-24-1 Bribery of Pueblo Official or Pueblo Employee**

Bribery of Pueblo officer or Pueblo employee consists of any person giving or offering to give, directly or indirectly, anything of value to any Pueblo official or Pueblo employee, with intent to induce or influence such person to:

- A. give or render any official opinion, judgment or decree;
- B. be more favorable to one party than to the other in any cause, action, suit, election, appointment, matter or thing pending or to be brought before such person;
- C. procure him to vote or withhold his vote on any question, matter or proceeding which is then or may thereafter be pending, and which may by law come or be brought before him in his capacity as a Pueblo official or employee;
- D. execute any of the powers in him vested; or
- E. perform any duty otherwise than as required by law, or to delay in or omit to perform any duty required of him by law.

Whoever commits bribery of Pueblo officer or Pueblo employee is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-24-2 Demanding or Receiving Bribe by Pueblo Official or Pueblo Employee

Demanding or receiving a bribe by Pueblo official or Pueblo employee consists of any Pueblo official or Pueblo employee soliciting or accepting, directly or indirectly, anything of value, with intent to have his decision or action on any question, matter, cause, proceeding or appointment influenced thereby, and which by law is pending or might be brought before him in his official capacity.

Whoever commits demanding or receiving bribe by Pueblo official or Pueblo employee is guilty of a Class 3 offense, and upon conviction thereof such Pueblo official or Pueblo employee shall forfeit the office then held by him.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-24-3 Bribery or Intimidation of a Witness; Retaliation against a Witness

A. Bribery or intimidation of a witness consists of any person knowingly:

1. giving or offering to give anything of value to any witness or to any person likely to become a witness in any judicial, administrative, legislative or other official cause or proceeding to testify falsely or to abstain from testifying to any fact in such cause or proceeding;
2. intimidating or threatening any witness or person likely to become a witness in any judicial, administrative, legislative or other official cause or proceeding for the purpose of preventing such individual from testifying to any fact, to abstain from testifying or to testify falsely; or
3. intimidating or threatening any person or giving or offering to give anything of value to any person with the intent to keep the person from truthfully reporting to a law enforcement officer or any agency of government that is responsible for enforcing criminal laws information relating to the commission or possible commission of a felony offense or a violation of conditions of probation, parole or release pending judicial proceedings.

B. Retaliation against a witness consists of any person knowingly engaging in conduct that causes bodily injury to another person or damage to the tangible property of another person, or threatening to do so, with the intent to retaliate against any person for any information relating to the commission or possible commission of a felony offense or a violation of conditions of probation, parole or release pending judicial proceedings given by a person to a law enforcement officer.

C. Whoever commits bribery or intimidation of a witness is guilty of a Class 3 offense.

D. Whoever commits retaliation against a witness is guilty of a Class 2 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-24-4 Acceptance of a Bribe by a Witness

A. No person who is a witness or is likely to become a witness shall receive, agree to receive or solicit any bribe or anything of value to:

1. testify falsely or to abstain from testifying to any fact in any cause in any judicial, administrative, legislative or other proceeding; or

2. abstain from truthfully reporting to a law enforcement officer or any agency of government that is responsible for enforcing criminal laws information relating to the commission or possible commission of a felony offense or a violation of conditions of probation, parole or release pending judicial proceedings.

B. Whoever receives, agrees to receive or solicits a bribe is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**ARTICLE 25 – PERJURY AND FALSE AFFIRMATIONS**

Sec. 8-25-1 Perjury

A. Perjury consists of making a false statement under oath, affirmation or penalty of perjury, material to the issue or matter involved in the course of any judicial, administrative, legislative or other official proceeding or matter, knowing such statement to be untrue.

B. Whoever commits perjury is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-25-2 Refusal to Take Oath or Affirmation

A. Refusal to take oath or affirmation consists of the refusal of any person, when legally called upon to give testimony before any court, administrative proceeding, legislative proceeding or other authority authorized to administer oaths or affirmations, to take such oath or affirmation.

B. Whoever commits refusal to take oath or affirmation is guilty of a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**ARTICLE 26 - INTERFERENCE WITH PUEBLO RECORDS**

Sec. 8-26-1 Tampering with Pueblo Records

Tampering with Pueblo records consists of:

A. knowingly altering any Pueblo record without lawful authority;

B. any Pueblo official or Pueblo employee knowingly filing or recording any written instrument, judicial order, judgment or decree in a form other than as the original thereof in fact appeared;

C. any Pueblo official or Pueblo employee knowingly falsifying or falsely making any record or file, authorized or required by law to be kept;

D. any Pueblo official or Pueblo employee knowingly issuing or causing to be issued, any false or untrue certified copy of a Pueblo record; or

E. knowingly destroying, concealing, mutilating or removing without lawful authority any Pueblo record or document belonging to or received or kept for information, record or pursuant to law.

Whoever commits tampering with Pueblo records is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 27 – MALICIOUS PROSECUTION, ETC.**

### **Sec. 8-27-1    Malicious Criminal Prosecution**

Malicious criminal prosecution consists of maliciously procuring or attempting to procure or otherwise causing or attempting to cause a criminal charge to be referred or prosecuted against an innocent person, knowing him to be innocent.

Whoever commits malicious criminal prosecution is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **Sec. 8-27-2    Impersonating a Peace Officer**

A. Impersonating a peace officer consists of:

1. without due authority exercising or attempting to exercise the functions of a peace officer; or
2. pretending to be a peace officer with the intent to deceive another person.

B. Whoever commits impersonating a peace officer is guilty of a Class 5 offense. Upon a second or subsequent conviction the offender is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-27-3 Barratry

Barratry consists of:

A. Intentionally instigating, maintaining, exciting, prosecuting or encouraging the bringing of any suit in the Contemporary Court in which such person has no interest, with the intent to distress or harass the defendant;

B. intentionally bringing or prosecuting any false suit by a person on his own account, with intent to distress or harass the defendant therein;

C. any attorney-at-law seeking or obtaining employment in any suit or case to prosecute or defend the same by means of personal solicitation of such employment or, procuring another to solicit employment for him; or

D. any attorney-at-law seeking or obtaining employment in any suit, by giving to the person from whom the employment is sought anything of value or directly or indirectly paying the debts or liabilities of the person from whom such employment is sought or loaning or promising to give or otherwise grant anything of value to the person from whom such employment is sought before such employment in order to induce such employment.

Whoever commits barratry is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-27-4 Securing Signature to Petition by Unlawful Means

Securing signature to petition by unlawful means consists of securing the signature of any person to any petition now or hereafter provided for by the laws of this Pueblo, by paying or promising to pay the signer anything of value, direct or indirect, or by securing such signature by force, threats or intimidation, or by forging or copying the names of any person to any such petition.

Whoever commits securing signature to petition by unlawful means is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**ARTICLE 28 – INITIATORY CRIMES**

Sec. 8-28-1 Attempt to Commit a Felony Offense

Attempt to commit a felony offense consists of an overt act in furtherance of and with intent to commit a felony offense and tending but failing to affect its commission.

Whoever commits attempt to commit a felony offense upon conviction thereof, shall be punished as follows:



A. if the crime attempted is a Class 1 offense, the person committing such attempt is guilty of a Class 2 offense;

B. if the crime attempted is a Class 2 offense, the person committing such attempt is guilty of a Class 3 offense;

C. if the crime attempted is a Class 3 offense, the person committing such attempt is guilty of a Class 4 offense; and

D. if the crime attempted is a Class 4 offense, the person committing such attempt is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-28-2 Conspiracy

A. Conspiracy consists of knowingly combining with another for the purpose of committing a felony offense.

B. Whoever commits conspiracy shall be punished as follows:

1. if the highest crime conspired to be committed is a Class 1 offense, the person committing such conspiracy is guilty of a Class 2 offense;

2. if the highest crime conspired to be committed is a Class 2 offense, the person committing such conspiracy is guilty of a Class 3 offense; and

3. if the highest crime conspired to be committed is a Class 3 or Class 4 offense, the person committing such conspiracy is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-28-3 Criminal Solicitation; Penalty

A. Except as to bona fide acts of persons authorized by law to investigate and detect the commission of offenses by others, a person is guilty of criminal solicitation if, with the intent that another person engage in conduct constituting a felony offense, he solicits, commands, requests, induces, employs or otherwise attempts to promote or facilitate another person to engage in conduct constituting a felony offense within or without the Pueblo.

B. In any prosecution for criminal solicitation, it is an affirmative defense that under circumstances manifesting a voluntary and complete renunciation of criminal intent, the defendant:

1. notified the person solicited; and

2. gave timely and adequate warning to law enforcement authorities or otherwise made a substantial effort to prevent the criminal conduct solicited.

The burden of raising this issue is on the defendant but does not shift the burden of proof of the prosecution to prove all of the elements of the crime of solicitation beyond a reasonable doubt.

C. It is not a defense that the person solicited could not be guilty of the offense solicited due to insanity, minority or other lack of criminal responsibility or incapacity. It is not a defense that the person solicited is unable to commit the crime solicited because of lack of capacity, status or other characteristic needed to commit the crime solicited, so long as the person soliciting or the person solicited believes that he or they have such capacity, status or characteristics.

D. A person is not liable for criminal solicitation when his solicitation constitutes conduct of a kind that is necessarily incidental to the commission of the offense solicited. When the solicitation constitutes an offense other than criminal solicitation, which is related to but separate from the offense solicited, the defendant is guilty of such related offense and not of criminal solicitation. Provided, a defendant may be prosecuted for and convicted of both the criminal solicitation as well as any other crime or crimes committed by the defendant or his accomplices or coconspirators, or the crime or crimes committed by the person solicited.

E. Any person convicted of criminal solicitation shall be punished as follows:

1. if the highest crime solicited is a Class 1 offense, the person soliciting such felony is guilty of a Class 2 offense;
2. if the highest crime solicited is a Class 2 offense, the person soliciting such a felony is guilty of a Class 3 offense; and
3. if the highest crime solicited is a Class 3 or Class 4 offense, the person soliciting such felony is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 29 – GLUES**

### **Sec. 8-29-1 Glues; Limiting the Sales; Requiring Records; Penalty**

A. No person shall sell glue to any person under eighteen years of age. A New Mexico driver's license shall be prima facie proof of age.

B. Wholesale distributors of glue shall make available to law enforcement agencies of the Pueblo during business hours their records of all sales to retailers of glue on Pueblo Lands.

C. As used in this section, "glue" means what is commonly referred to as plastic or model airplane cement and includes any cement containing hexane, benzene, toluene, xylene, carbon tetrachloride, chloroform, ethylene dichloride, acetone, cyclohexanone, methyl ethyl ketone, methylisobutyl ketone, amyl acetate, butyl acetate, ethyl acetate, tricresyl phosphate, butyl alcohol, ethyl alcohol, isopropyl alcohol or methylcellosolve acetate.

D. Any person violating any provision of this section is guilty of a Class 6 offense.

**Sec. 8-29-2    Glue; Aerosol Spray; Abuse or Possession for Abuse; Penalty**

A.     No person shall intentionally smell, sniff or inhale the fumes or vapors from a glue, aerosol spray product or other chemical substance for the purpose of causing a condition of or inducing symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, stupefaction or dulling of the senses, or for the purpose of in any manner changing, distorting or disturbing the audio, visual or mental processes.

B.     No person shall intentionally possess a glue, aerosol spray product or other chemical substance for any purpose set forth in Subsection A of this section.

C.     As used in this section, “glue” means what is commonly referred to as plastic or model airplane cement and includes any cement containing hexane, benzene, toluene, xylene, carbon tetrachloride, chloroform, ethylene dichloride, acetone, cyclohexanone, methyl ethyl ketone, methylisobutyl ketone, amyl acetate, butyl acetate, ethyl acetate, tricresyl phosphate, butyl alcohol, ethyl alcohol, isopropyl alcohol or methylcellosolve acetate.

D.     The provisions of this section do not apply to any aerosol spray product or other chemical substance used for legitimate medicinal purposes and obtained either on a prescription basis or for medicinal purposes by a person over the age of eighteen.

E.     Any person who violates any provision of this section is guilty of a Class 5 offense. The sentence or fine may be waived in the discretion of the court in the case of any person who has not been previously convicted of violating this section and who has successfully completed a drug education or treatment program approved by the court.

**ARTICLE 30 – MERCURY**

**Sec. 8-30-1    Illegal Possession of Mercury**

Illegal possession of mercury consists of possessing more than one pound of mercury without also possessing a bona fide bill of sale or other instrument in writing relating to the mercury in possession stating the name and address of the seller, the name and address of the purchaser, the date of the sale, the amount sold and the price paid therefor; provided however, this section shall not be applicable to any person engaged in the business of mining, processing mercury, or to any person using mercury as an integral part of a tool, instrument or device in his business, or to a law enforcement officer in discharge of his duties.

Whoever commits illegal possession of mercury is guilty of a Class 4 offense.

## ARTICLE 30A - CANNABIS

### Sec. 8-30A-1 Definitions

A. “cannabis” means (1) all parts of the plant genus *Cannabis* containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and (2) does not include: (a) the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination; or (b) the weight of any other ingredient combined with cannabis products to prepare topical or oral administrations, food, drink or another product.

B. “cannabis extract” means (1) a product obtained by separating resins, tetrahydrocannabinols or other substances from cannabis by extraction methods approved by the division; and (2) does not include the weight of any other ingredient combined with cannabis extract to prepare topical or oral administrations, food, drink or another product;

C. “cannabis product” means a product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### Sec. 8-30A-2 Personal Use of Cannabis

A. The following conduct is lawful for a person who is twenty-one years of age or older and shall not constitute grounds for detention, search or arrest of a person or search of property, and cannabis products that relate to the conduct are not contraband or subject to seizure or forfeiture under Pueblo of Santa Ana law:

1. possessing, using, being under the influence of, displaying, purchasing, obtaining or transporting not more cannabis than authorized by this Article or the New Mexico Lynn and Erin Compassionate Use Act, NMSA §§ 26-2B-1 through 7;
2. possessing in excess of two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis if the excess is stored in the person’s private residence and not visible from a public place;
3. transferring, without financial consideration, to a person who is twenty-one years of age or older not more than the amount of cannabis authorized by this Article or the New Mexico Lynn and Erin Compassionate Use Act, NMSA §§ 26-2B-1 through 7;
4. ingesting or otherwise consuming cannabis or cannabis products purchased and obtained lawfully;
5. possessing, using, displaying, purchasing, obtaining or manufacturing cannabis extract using nonvolatile solvents, alcohol or carbon dioxide or no solvents;
6. manufacturing, transporting or giving away to a person twenty-one years of age or older cannabis paraphernalia;

7. assisting another person who is twenty- one years of age or older in, or allowing property to be used in, any of the acts described in Paragraphs (1) through (6) of this subsection;

8. possessing, planting, cultivating, harvesting, drying, manufacturing cannabis products using nonvolatile solvents, alcohol or carbon dioxide or no solvents or transporting not more than six mature cannabis plants and six immature cannabis plants per person; provided that despite a household having multiple residents, no more than twelve mature cannabis plants may be present in one household; and provided further that if the person does not exceed the maximum number of cannabis plants, the person may possess the cannabis produced by the cannabis plants notwithstanding any weight limits; and

9. transporting homegrown cannabis or mature or immature cannabis plants when the person is moving the person's residence to another location or for purposes of testing or manufacturing. Paragraph (6) of Subsection A of this section is intended to meet the requirements of 21 U.S.C. Section 863(f) by authorizing under Pueblo of Santa Ana law any person in compliance with this section to manufacture, possess or distribute cannabis paraphernalia.

B. None of the following shall, individually or in combination with each other, constitute reasonable articulable suspicion of a crime and is not a basis to stop, detain or search a person:

1. the odor of cannabis or cannabis extract or of burnt cannabis or cannabis extract;

2. the possession of or the suspicion of possession of cannabis without evidence of quantity in excess of two ounces of cannabis, sixteen grams of cannabis extract or eight hundred milligrams of edible cannabis; or

3. the possession of multiple containers of cannabis without evidence of quantity in excess of two ounces of cannabis, sixteen grams of cannabis extract or eight hundred milligrams of edible cannabis.

C. Paragraph (1) of Subsection A and Subsection C of this section shall not apply when a law enforcement officer is investigating whether a person is: carrying a firearm while under the influence of an intoxicant or narcotic, in violation of Sec. 8-7-4; operating a vehicle while intoxicated or under the influence of or impaired by alcohol or a drug or any combination thereof, in violation of Title IX, Sec. 9-5-3; or violating any other Pueblo of Santa Ana law where being under the influence of an intoxicant or narcotic is an element of a crime.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### Sec. 8-30A-3 Limits on Personal Use

A. Nothing in this Title shall be construed to: allow a person to smoke cannabis products in a public place; or restrict the ability of the Pueblo to prohibit conduct otherwise allowed in this Title in certain areas.

B. A person who violates Paragraph (1) of Subsection A of this section shall be subject to a civil penalty of fifty dollars (\$50.00).

C. As used in this section, “smoke” means to inhale, exhale, burn or carry any lighted or heated device or pipe or any other lighted or heated cannabis products intended for inhalation, whether natural or synthetic, in any manner or in any form.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-30A-4 Personal Production of Cannabis

A. Unless otherwise provided in this Title, it is unlawful for a person to intentionally produce cannabis products except as provided in this section.

B. A person twenty-one years of age or older who intentionally produces:

1. more than six and up to twelve mature or immature cannabis plants shall be issued a penalty assessment pursuant to Title IX, Sec. 9-10-3, and is subject to a fine of fifty dollars (\$50.00); and
2. more than twelve mature or immature cannabis plants is guilty of a Class 4 offense.

C. A person who is eighteen years of age or older but less than twenty-one years of age who intentionally produces:

1. up to six mature or immature cannabis plants shall be issued a penalty assessment pursuant to Title IX, Sec. 9-10-3, and is subject to a fine of fifty dollars (\$50.00);
2. more than six mature or immature cannabis plants and up to twelve mature or immature cannabis plants is guilty of a Class 5 offense; and
3. more than twelve mature or immature cannabis plants is guilty of a Class 4 offense.

D. A person who is less than eighteen years of age who intentionally produces cannabis products is guilty of a civil violation and shall be subject to: attendance at a four-hour evidence-based drug education and legal rights program at no cost to the minor; or four hours of community service.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-30A-5 Trafficking Cannabis

A. As used in this section, “traffic” means the: distribution, sale, barter or giving away of cannabis products; or possession with intent to distribute, sell, barter or give away cannabis products.

B. Unless otherwise provided in this Title, or the Lynn and Erin Compassionate Use Act, it is unlawful for a person to intentionally traffic cannabis products.

C. A person under eighteen years of age who violates Subsection B of this section shall be subject to: attendance at a four-hour evidence-based education and legal rights program at no cost to the person; or four hours of community service.

D. A person eighteen years of age or older who violates Subsection B of this section is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### **Sec. 8-30A-6 Cannabis within Restricted Area**

A person shall not possess or intentionally distribute any amount of a cannabis product on the premises of a school or daycare center unless the person is a qualified patient or a primary caregiver; provided that this section shall not apply to a person who possesses a cannabis product for authorized purposes on the premises of a licensed cannabis training and education program. A person who violates this section is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### **Sec. 8-30A-7 Unlawful Possession of Cannabis Products**

Except in accordance with the New Mexico Lynn and Erin Compassionate Use Act, NMSA §§ 26-2B-1 through 7:

A. a person under twenty-one years of age shall not possess cannabis products. A person who violates this subsection is guilty of a civil violation and shall be subject to: attendance at a four-hour evidence-based drug education and legal rights program at no cost to the person; or four hours of community service;

B. a person twenty-one years of age or older shall not possess more than two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis in public. A person who violates this subsection with respect to:

1. more than two but not more than eight ounces of cannabis, more than sixteen grams of cannabis extract and more than eight hundred milligrams of edible cannabis is guilty of a Class 5 offense; or

2. more than eight ounces of cannabis, sixty-four grams of cannabis extract or three thousand two hundred milligrams of edible cannabis is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### **Sec. 8-30A-8 Unlawful Manufacturing of Cannabis Extracts**

It is unlawful for a person to manufacture cannabis extract unless the person produces and manufactures cannabis extract from homegrown cannabis using nonvolatile solvents, alcohol or carbon dioxide or no solvents. A person who violates this section is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **ARTICLE 31 – CONTROLLED SUBSTANCES**

#### **Sec. 8-31-1 Definitions**

A. “administer” means the direct application of a controlled substance by any means to the body of a patient or research subject by a practitioner or the practitioner’s agent;

B. “agent” includes an authorized person who acts on behalf of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseperson or employee of the carrier or warehouseperson;

C. “board” means the New Mexico board of pharmacy;

D. “bureau” means the narcotic and dangerous drug section of the criminal division of the United States department of justice, or its successor agency;

E. “controlled substance” means a drug or substance listed in Schedules I through V of this Article;

F. “controlled substance analog” means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in Schedule I, II, III, IV or V or that was specifically designed to produce effects substantially similar to that of controlled substances in Schedule I, II, III, IV or V. Examples of chemical classes in which controlled substance analogs are found include the following:

1. phenethylamines;
2. N-substituted piperidines;
3. morphinans;
4. ecgonines;
5. quinazolinones;
6. substituted indoles; and
7. arylcycloalkylamines.

Specifically excluded from the definition of “controlled substance analog” are those substances that are generally recognized as safe and effective within the meaning of the federal Food, Drug and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the federal Food, Drug and Cosmetic Act;

G. “counterfeit substance” means a controlled substance that bears the unauthorized trademark, trade name, imprint, number, device or other identifying mark or likeness of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the controlled substance;

H. “deliver” means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is an agency relationship;

I. “dispense” means to deliver a controlled substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling or compounding necessary to prepare the controlled substance for that delivery;



J. “dispenser” means a practitioner who dispenses and includes hospitals, pharmacies and clinics where controlled substances are dispensed;

K. “distribute” means to deliver other than by administering or dispensing a controlled substance or controlled substance analog;

L. “drug” or “substance” means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices or their components, parts or accessories;

M. “drug-free school zone” means a public school, parochial school or private school or property that is used for a public, parochial or private school purpose and the area within one thousand feet of the school property line, but it does not mean any post-secondary school; and

N. “drug paraphernalia” means all equipment, products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of this Article. In determining whether an object is drug paraphernalia, the court should consider, in addition to all other logically relevant factors, the following:

1. statements by the owner or by anyone in control of the object concerning its use;
2. the proximity of the object, in time and space, to a direct violation of this Article or any other law relating to controlled substances or controlled substance analogs;
3. the proximity of the object to controlled substances or controlled substance analogs;
4. the existence of any residue of a controlled substance or controlled substance analog on the object;
5. instructions, written or oral, provided with the object concerning its use;
6. descriptive materials accompanying the object that explain or depict its use;
7. the manner in which the object is displayed for sale; and
8. expert testimony concerning its use;

O. “human consumption” includes application, injection, inhalation, ingestion or any other manner of introduction;

P. “manufacture” means the production, preparation, compounding, conversion or processing of a controlled substance or controlled substance analog by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance;

1. by a practitioner as an incident to administering or dispensing a controlled substance in the course of the practitioner's professional practice; or
2. by a practitioner, or by the practitioner's agent under the practitioner's supervision, for the purpose of or as an incident to research, teaching or chemical analysis and not for sale;

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

1. opium and opiate and any salt, compound, derivative or preparation of opium or opiate;
2. any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of the substances referred to in Paragraph (1) of this subsection, except the isoquinoline alkaloids of opium;
3. opium poppy and poppy straw, including all parts of the plant of the species *Papaver somniferum* L. except its seeds; or
4. coca leaves and any salt, compound, derivative or preparation of coca leaves, any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of these substances except decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine;

R. "opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under this Article, the dextrorotatory isomer of 3-methoxyn-methylmorphinan and its salts, dextromethorphan. "Opiate" does include its racemic and levorotatory forms;

S. "person" means an individual, partnership, corporation, association, institution, political subdivision, government agency or other legal entity;

T. "practitioner" means a physician, certified advanced practice chiropractic physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, prescribing psychologist, veterinarian, euthanasia technician, pharmacist, pharmacist clinician or other person licensed or certified to prescribe and administer drugs that are subject to this Article;

U. "prescription" means an order given individually for the person for whom is prescribed a controlled substance, either directly from a licensed practitioner or the practitioner's agent to the pharmacist, including by means of electronic transmission, or indirectly by means of a written order signed by the prescriber, bearing the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue and in accordance with this Article or rules adopted thereto;

V. “scientific investigator” means a person registered to conduct research with controlled substances in the course of the person’s professional practice or research and includes analytical laboratories;

W. “ultimate user” means a person who lawfully possesses a controlled substance for the person’s own use or for the use of a member of the person’s household or for administering to an animal under the care, custody and control of the person or by a member of the person’s household; and

X. “valid practitioner-patient relationship” means a professional relationship, as defined by the practitioner’s licensing board, between the practitioner and the patient.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-31-2 Schedule I

The following controlled substances are included in Schedule I:

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

1. acetylmethadol;
2. allylprodine;
3. alphacetylmethadol;
4. alphameprodine;
5. alphamethadol;
6. benzethidine;
7. betacetylmethadol;
8. betameprodine;
9. betamethadol;
10. betaprodine;
11. clonitazene;
12. dextromoramide;
13. dextrophan;
14. diampromide;
15. diethylthiambutene;
16. dimenoxadol;
17. dimepheptanol;
18. dimethylthiambutene;
19. dioxaphetyl butyrate;
20. dipipanone;
21. ethylmethylthiambutene;
22. etonitazene;
23. etoxeridine;
24. furethidine;
25. hydroxypethidine;

26. ketobemidone;
27. levomoramide;
28. levophenacymorphan;
29. morpheridine;
30. noracymethadol;
31. norlevorphanol;
32. normethadone;
33. norpipanone;
34. phenadoxone;
35. phenampromide;
36. phenomorphan;
37. phenoperidine;
38. piritramide;
39. proheptazine;
40. properidine;
41. racemoramide; and
42. trimeperidine.

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

1. acetorphine;
2. acetyldihydrocodeine;
3. benzylmorphine;
4. codeine methylbromide;
5. codeine-N-oxide;
6. cyprenorphine;
7. desomorphine;
8. dihydromorphine;
9. etorphine;
10. heroin;
11. hydromorphenol;
12. methyl-desorphine;
13. methyldihydromorphine;
14. morphine methylbromide;
15. morphine methylsulfonate;
16. morphine-N-oxide;
17. myrophine;
18. nicocodeine;
19. nicomorphine;
20. normorphine;
21. pholcodine; and
22. thebacon;

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

1. 3,4-methylenedioxy amphetamine;
2. 5-methoxy-3,4-methylenedioxy amphetamine;
3. 3,4,5-trimethoxy amphetamine;
4. bufotenine;
5. diethyltryptamine;
6. dimethyltryptamine;
7. 4-methyl-2,5-dimethoxy amphetamine;
8. ibogaine;
9. lysergic acid diethylamide;
10. mescaline;
11. peyote, except as otherwise provided in this Article;
12. N-ethyl-3-piperidyl benzilate;
13. N-methyl-3-piperidyl benzilate;
14. psilocybin;
15. psilocyn;
16. synthetic cannabinoids;
17. 3,4-methylenedioxymethcathinone;
18. 3,4-methylenedioxypyrovalerone;
19. 4-methylmethcathinone;
20. 4-methoxymethcathinone;
21. 3-fluoromethcathinone; and
22. 4-fluoromethcathinone;

D. any drug not included in this section that is classified as a Schedule I drug under federal law, except marijuana, tetrahydrocannabinols, and hashish, or by rule adopted by the board;

E. the enumeration of peyote as a controlled substance does not apply to the use of peyote in bona fide religious ceremonies by a bona fide religious organization, and members of the organization so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the organization or its members shall comply with the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 and all other requirements of law.

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#### Sec. 8-31-3 Schedule II

The following controlled substances are included in Schedule II:

1. any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable

origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- a. opium and opiate, and any salt, compound, derivative or preparation of opium or opiate;
- b. any salt, compound, isomer, derivative or preparation thereof that is chemically equivalent or identical with any of the substances referred to in Subparagraph (a) of this paragraph, but not including the isoquinoline alkaloids of opium;
- c. opium poppy and poppy straw;
- d. coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof that is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions that do not contain cocaine or ecgonine;

2. any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- a. alphaprodine;
- b. anileridine;
- c. bezitramide;
- d. dihydrocodeine;
- e. diphenoxylate;
- f. fentanyl;
- g. hydromorphone;
- h. isomethadone;
- i. levomethorphan;
- j. levorphanol;
- k. meperidine;
- l. metazocine;
- m. methadone;
- n. methadone--intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- o. moramide--intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- p. oxycodone;
- q. pethidine;
- r. pethidine--intermediate--A, 4-cyano-1-methyl-4-phenylpiperidine;
- s. pethidine--intermediate--B, ethyl-4-phenyl-piperidine-4-carboxylate;
- t. pethidine--intermediate--C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- u. phenazocine;
- v. piminodine;
- w. racemethorphan; and
- x. racemorphan;

3. unless listed in another schedule, any material, compound, mixture or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- a. amphetamine, its salts, optical isomers and salts of its optical isomers;
- b. phenmetrazine and its salts;
- c. methamphetamine, its salts, isomers and salts of isomers; and
- d. methylphenidate; and

4. any drug not included in this section that is classified as a Schedule II drug under federal or New Mexico law or regulation.

Where methadone is prescribed, administered or dispensed by a practitioner of a drug abuse rehabilitation program while acting in the course of the practitioner's professional practice, or otherwise lawfully obtained or possessed by a person, such person shall not possess such methadone beyond the date stamped or typed on the label of the container of the methadone, nor shall any person possess methadone except in the container in which it was originally administered or dispensed to such person, and such container shall include a label showing the name of the prescribing physician or practitioner, the identity of methadone, the name of the ultimate user, the date when the methadone is to be administered to or used or consumed by the named ultimate user shown on the label and a warning on the label of the methadone container that the ultimate user must use, consume or administer to the ultimate user the methadone in such container. Any person who violates this subsection is guilty of a Class 2 offense and shall be punished by imprisonment for not less than one year, or by a fine of up to five thousand dollars (\$5,000), or both.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-31-4 Schedule III

The following contraband substances are included in Schedule III:

A. any material, compound, mixture or preparation containing limited quantities of any substance having a stimulant effect on the central nervous system which is controlled and listed in Schedule II;

B. unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- 1. any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in another schedule;
- 2. chlorhexadol;
- 3. glutethimide;
- 4. lysergic acid;
- 5. lysergic acid amide;

6. methyprylon;
7. phencyclidine;
8. sulfondiethylmethane;
9. sulfonethylmethane; or
10. sulfonmethane;
11. nalorphine;

C. any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

1. not more than one and eight-tenths grams of codeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
2. not more than one and eight-tenths grams of codeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
3. not more than three hundred milligrams of dihydrocodeinone, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
4. not more than three hundred milligrams of dihydrocodeinone, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
5. not more than one and eight-tenths grams of dihydrocodeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
6. not more than three hundred milligrams of ethylmorphine, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;
7. not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts; or
8. not more than fifty milligrams of morphine, or any of its salts, per one hundred milliliters or per one hundred grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

D. any drug not included in this section that is classified as a Schedule III drug under federal or New Mexico law or regulation.



Sec. 8-31-5 Schedule IV

The following controlled substances are included in Schedule IV:

A. any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

1. barbital;
2. chloral betaine;
3. chloral hydrate;
4. ethchlorvynol;
5. ethinamate;
6. methohexital;
7. meprobamate;
8. methylphenobarbital;
9. paraldehyde;
10. petrichloral; or
11. phenobarbital;

B. any drug not included in this section that is classified as a Schedule IV drug under federal or New Mexico law or regulation.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-31-6 Schedule V

A. The following controlled substances are included in Schedule V:

5. any compound, mixture or preparation that contains the following limited quantities of any of the following narcotic drugs, and that also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- a. not more than two hundred milligrams of codeine, or any of its salts, per one hundred milliliters or per one hundred grams;
- b. not more than one hundred milligrams of dihydrocodeine, or any of its salts, per one hundred milliliters or per one hundred grams;
- c. not more than one hundred milligrams of ethylmorphine, or any of its salts, per one hundred milliliters or per one hundred grams;
- d. not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit; or
- e. not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams;

2. any compound, mixture or preparation that contains any detectable quantity of pseudoephedrine, its salts or its optical isomers, or salts of its optical isomers. A

compound, mixture or preparation as specified in this paragraph shall be dispensed, sold or distributed only by a licensed pharmacist or pharmacist intern or a registered pharmacy technician. Unless pursuant to a valid prescription, a person purchasing, receiving or otherwise acquiring the compound, mixture or preparation shall:

- a. produce a driver's license or other government-issued photo identification showing the date of birth of the person;
- b. sign a written log, receipt or other program or mechanism indicating the date of the transaction, name of the person, driver's license number or government-issued identification number, name of the pharmacist, pharmacist intern or pharmacy technician conducting the transaction, the product sold and the total quantity, in grams or milligrams, of pseudoephedrine purchased; and
- c. be limited to no more than nine grams of any product, mixture or preparation within a thirty-day period; and

3. any drug, compound, mixture, or preparation not included in this section that is classified as a Schedule V drug under federal or New Mexico law or regulation.

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#### Sec. 8-31-7 Registration Requirements

A. A person who manufactures, distributes or dispenses a controlled substance or who proposes to engage in the manufacture, distribution or dispensing of a controlled substance shall obtain a registration issued by the board in accordance with its regulations.

B. Persons registered by the board to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense, prescribe or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this Article.

C. The following persons need not register and may lawfully possess controlled substances:

1. an agent of a registered manufacturer, distributor or dispenser of a controlled substance if the agent is acting in the usual course of the agent's principal's business or employment;
2. a common or contract carrier or warehouseman, or an employee whose possession of a controlled substance is in the usual course of the common or contract carrier or warehouseman's business;
3. an ultimate user; or
4. manufacturers, distributors or dispensers whose registration requirement has been waived by regulation or the board.

D. The board may inspect the establishment of a registrant or applicant for registration with the Governor's permission.

**Sec. 8-31-8    Records of Registrants**

A.     Every registrant under this Article manufacturing, distributing or dispensing a controlled substance shall maintain, on a current basis, a complete and accurate record of each substance manufactured, received, sold or delivered by him in accordance with regulations of the board.

Inventories as required in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 shall be deemed in compliance with inventory requirements under this section.

B.     Records for drugs under Schedules I and II shall be kept separate from other records. Prescriptions for all Schedule I and II drugs and narcotic prescriptions for controlled substances listed in Schedules III, IV and V shall be maintained separately from other prescription drugs in accordance with regulations of the board.

C.     Records for nonnarcotic controlled substances under Schedules III, IV and V shall be maintained either separately or in such form that they are readily retrievable and are marked for ready identification in accordance with regulations of the board. Prescriptions for nonnarcotic controlled substances shall be maintained either in a separate prescription file or in such form that they are readily retrievable from other prescription records and are marked for ready identification in accordance with regulations of the board.

D.     Records shall be maintained for a period of at least three years from the date of the record and may be inspected as required by authorized agents of the board.

E.     A practitioner is not required to keep records of controlled substances listed in Schedules II through V that he prescribes or administers in the lawful course of his professional practice. He shall keep records of controlled substances that he dispenses other than by prescribing or administering.

**Sec. 8-31-9    Order Forms**

Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 respecting order forms shall be deemed compliance with this section.

**Sec. 8-31-10   Prescriptions**

A.     No controlled substance listed in Schedule II, which is a prescription drug as determined by the federal food and drug administration, may be dispensed without a written

prescription of a practitioner, unless administered directly to an ultimate user. No prescription for a Schedule II substance may be refilled. No person other than a practitioner shall prescribe or write a prescription.

B. Prescriptions for Schedules II through IV shall contain the following information:

1. the name and address of the patient for whom the drug is prescribed;
  2. the name, address and registry number of the person prescribing the drug;
- and
3. the identity of the pharmacist of record.

C. A controlled substance included in Schedules III or IV, which is a prescription drug, shall not be dispensed without a written or oral prescription of a practitioner, except when administered directly by a practitioner to an ultimate user. The prescription shall not be filled or refilled more than six months after the date of issue or be refilled more than five times, unless renewed by the practitioner and a new prescription is placed in the file. Prescriptions shall be retained in conformity with the regulations of the board.

D. The label affixed to the dispensing container of a drug listed in Schedules II, III or IV, when dispensed to or for a patient, shall contain the following information:

1. date of dispensing and prescription number;
2. name and address of the pharmacy;
3. name of the patient;
4. name of the practitioner; and
5. directions for use and cautionary statements, if any.

E. The label affixed to the dispensing container of a drug listed in Schedule II, III or IV, when dispensed to or for a patient, shall contain a clear concise warning that it is a crime to transfer the drug to any person other than the patient.

F. No controlled substance included in Schedule V, which is a proprietary nonprescription drug, shall be distributed, offered for sale or dispensed other than for a medical purpose and a record of the sale shall be made in accordance with the regulations of the board.

G. In emergency situations, as defined by regulation, Schedule II drugs may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing and filed by the pharmacy in accordance with regulations of the board.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-31-11 Distributions by Manufacturers or Distributors

A manufacturer or distributor registered with the board may distribute controlled substances to the following:

- A. a registered manufacturer, pharmacy or distributor;

- B. a registered practitioner;
- C. a registered hospital or clinic; and
- D. to a person in charge of a registered laboratory, but only for use by that laboratory for scientific and medical purposes.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-31-12 Trafficking Controlled Substances; Violation

- A. As used in this Article, “traffic” means the:
  - 1. manufacture of a controlled substance enumerated in Schedules I through V or a controlled substance analog as defined in Subsection X of Sec. 8-31-1;
  - 2. distribution, sale, barter or giving away of:
    - a. a controlled substance enumerated in Schedule I or II that is a narcotic drug;
    - b. a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug; or
    - c. methamphetamine, its salts, isomers and salts of isomers; or
  - 3. possession with intent to distribute:
    - a. a controlled substance enumerated in Schedule I or II that is a narcotic drug;
    - b. controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug; or
    - c. methamphetamine, its salts, isomers and salts of isomers.
- B. Except as authorized by this Article, it is unlawful for a person to intentionally traffic. A person who violates this subsection is:
  - 1. for the first offense, guilty of a Class 2 offense; and
  - 2. for the second and subsequent offenses, guilty of a Class 1 offense.
- C. A person who knowingly violates Subsection B of this section within a drug-free school zone excluding private property residentially zoned or used primarily as a residence is guilty of a Class 1 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-31-13 Distribution to a Minor

Except as authorized by this Article, no person who is eighteen years of age or older shall intentionally distribute a controlled substance to a person under the age of eighteen years. Any

person who violates this section with respect to a controlled substance enumerated in Schedules I, II, III or IV or a controlled substance analog of any controlled substance enumerated in Schedule I, II, III or IV is:

1. for the first offense, guilty of a Class 2 offense; and
2. for the second and subsequent offenses, guilty of a Class 1 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-31-14 Controlled or Counterfeit Substances; Distribution Prohibited

A. Except as authorized by this Article, it is unlawful for a person to intentionally distribute or possess with intent to distribute a controlled substance or a controlled substance analog except a substance enumerated in Schedule I or II that is a narcotic drug, a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug or methamphetamine, its salts, isomers and salts of isomers. A person who violates this subsection with respect to:

1. synthetic cannabis is:
  - a. for the first offense, guilty of a Class 4 offense;
  - b. for the second and subsequent offenses, guilty of a Class 3 offense;
  - c. for the first offense, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a Class 3 offense; and
  - d. for the second and subsequent offenses, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a Class 2 offense.
2. any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a controlled substance enumerated in Schedule I, II, III or IV except a substance enumerated in Schedule I or II that is a narcotic drug, a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug or methamphetamine, its salts, isomers and salts of isomers, is:
  - a. for the first offense, guilty of a Class 3 offense; and
  - b. for the second and subsequent offenses, guilty of a Class 2 offense.
3. a controlled substance enumerated in Schedule V or a controlled substance analog of a controlled substance enumerated in Schedule V is guilty of a Class 5 offense and shall be punished by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) or by imprisonment for a definite term not less than forty-five (45) days but less than ninety (90) days, or both.

B. It is unlawful for a person to distribute gamma hydroxybutyric acid or flunitrazepam to another person without that person's knowledge and with intent to commit a crime against that person, including criminal sexual penetration. For the purposes of this subsection, "without that person's knowledge" means the person is unaware that a substance with the ability to alter that person's ability to appraise conduct or to decline participation in or

communicate unwillingness to participate in conduct is being distributed to that person. Any person who violates this subsection is:

1. for the first offense, guilty of a Class 3 offense; and
2. for the second and subsequent offenses, guilty of a Class 2 offense.

C. Except as authorized by this Article, it is unlawful for a person to intentionally create or deliver, or possess with intent to deliver, a counterfeit substance. A person who violates this subsection with respect to:

1. a counterfeit substance enumerated in Schedule I, II, III or IV is guilty of a Class 4 offense; and
2. a counterfeit substance enumerated in Schedule V is guilty of a Class 6 offense and shall be punished by a fine of not more than two hundred fifty dollars (\$250) or by imprisonment for a definite term not to exceed 30 days, or both.

D. A person who knowingly violates Subsection A or C of this section while within a drug-free school zone with respect to:

1. synthetic cannabinoids is:
  - a. for the first offense, guilty of a Class 3 offense;
  - b. for the second and subsequent offenses, guilty of a Class 2 offense;
  - c. for the first offense, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a Class 2 offense; and
  - d. for the second and subsequent offenses, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a Class 1 offense;
2. any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a controlled substance enumerated in Schedule I, II, III or IV except a substance enumerated in Schedule I or II that is a narcotic drug, a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug or methamphetamine, its salts, isomers and salts of isomers, is:
  - a. for the first offense, guilty of a Class 2 offense; and
  - b. for the second and subsequent offenses, guilty of a Class 1 offense;
3. a controlled substance enumerated in Schedule V or a controlled substance analog of a controlled substance enumerated in Schedule V is guilty of a Class 4 offense; and
4. the intentional creation, delivery or possession with the intent to deliver:
  - a. a counterfeit substance enumerated in Schedule I, II, III or IV is guilty of a Class 3 offense; and
  - b. a counterfeit substance enumerated in Schedule V is guilty of a Class 5 offense and shall be punished by a fine of not less than one hundred dollars (\$100) nor more

than five hundred dollars (\$500) or by imprisonment for a definite term not less than 45 days but less than 90 days, or both.

E. Notwithstanding the provisions of Subsection A of this section, distribution of a small amount of synthetic cannabinoids for no remuneration shall be treated as provided in Paragraph (1) of Subsection B of Sec. 8-31-15.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-31-15 Controlled Substances; Possession Prohibited

A. It is unlawful for any person intentionally to possess a controlled substance unless the substance was obtained pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice or except as otherwise authorized by this Article. It is unlawful for any person intentionally to possess a controlled substance analog.

B. Any person who violates this section with respect to:

1. one ounce or less of synthetic cannabinoids is, for the first offense, guilty of a Class 6 offense and shall be punished by a fine of not less than fifty dollars (\$50.00) or more than two hundred fifty dollars (\$250) or by imprisonment for not more than thirty days, or both, and, for the second and subsequent offenses, guilty of a Class 5 offense and shall be punished by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) or by imprisonment for a definite term less than 90 days, or both;

2. more than one ounce and less than eight ounces of synthetic cannabinoids is guilty of a Class 5 offense and shall be punished by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) or by imprisonment for a definite term less than 90 days, or both; or

3. eight ounces or more of synthetic cannabinoids is guilty of a Class 4 offense.

C. A minor who violates this section with respect to the substances listed in this subsection is guilty of a petty misdemeanor and shall be required to perform no more than forty-eight hours of community service. For the third or subsequent violation by a minor of this section with respect to those substances, the provisions of the Pueblo's Children's Code shall govern punishment of the minor. As used in this subsection, "minor" means a person who is less than eighteen years of age. The provisions of this subsection apply to the following substances:

1. synthetic cannabinoids;

2. any of the substances listed in Paragraphs (17) through (22) of Subsection A of Sec. 8-31-02; or

3. a substance added to Schedule I by a rule of the board adopted on or after March 31, 2011, if the board determines that the pharmacological effect of the substance, the risk to the public health by abuse of the substance and the potential of the substance to produce psychic or physiological dependence liability is similar to the substances described in Paragraph (1) or (2) of this subsection.



D. Except as provided in Subsections B and F of this section, and for those substances listed in Subsection E of this section, any person who violates this section with respect to any amount of any controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a substance enumerated in Schedule I, II, III or IV is guilty of a Class 5 offense and shall be punished by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) or by imprisonment for a definite term less than ninety (90) days, or both.

E. Any person who violates this section with respect to phencyclidine as enumerated in Schedule III or a controlled substance analog of phencyclidine; methamphetamine, its salts, isomers or salts of isomers as enumerated in Schedule II or a controlled substance analog of methamphetamine, its salts, isomers or salts of isomers; flunitrazepam, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of flunitrazepam, including naturally occurring metabolites, its salts, isomers or salts of isomers; gamma hydroxybutyric acid and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of gamma hydroxybutyric acid, its salts, isomers or salts of isomers; gamma butyrolactone and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of gamma butyrolactone, its salts, isomers or salts of isomers; 1-4 butane diol and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of 1-4 butane diol, its salts, isomers or salts of isomers; or a narcotic drug enumerated in Schedule I or II or a controlled substance analog of a narcotic drug enumerated in Schedule I or II is guilty of a Class 4 offense.

F. Except for a minor as provided in Subsection C of this section, any person who violates Subsection A of this section while within a posted drug-free school zone, excluding private property residentially zoned or used primarily as a residence and excluding any person in or on a motor vehicle in transit through the posted drug-free school zone, with respect to:

1. one ounce or less of synthetic cannabinoids is, for the first offense, guilty of a Class 5 offense and shall be punished by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) or by imprisonment for a definite term less than ninety (90) days, or both, and for the second or subsequent offense, is guilty of a Class 4 offense;
2. more than one ounce and less than eight ounces of synthetic cannabinoids is guilty of a Class 4 offense;
3. eight ounces or more of synthetic cannabinoids is guilty of a Class 3 offense;
4. any amount of any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a substance enumerated in Schedule I, II, III or IV, except phencyclidine as enumerated in Schedule III, a narcotic drug enumerated in Schedule I or II or a controlled substance analog of a narcotic drug enumerated in Schedule I or II, is guilty of a Class 4 offense; and

5. phencyclidine as enumerated in Schedule III, a narcotic drug enumerated in Schedule I or II, a controlled substance analog of phencyclidine or a controlled substance analog of a narcotic drug enumerated in Schedule I or II is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**Sec. 8-31-16 Controlled Substances; Violations of Administrative Provisions**

A. It is unlawful for any person:

1. who is subject to Sec. 8-31-7 through 8-31-11 to intentionally distribute or dispense a controlled substance in violation of Sec. 8-31-10;
2. who is a registrant, to intentionally manufacture a controlled substance not authorized by his registration, or to intentionally distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;
3. to intentionally refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice; or
4. to intentionally refuse an entry into any premises for any inspection authorized by the board and by the Governor.

B. Any person who violates this section is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**Sec. 8-31-17 Controlled Substances; Prohibited Acts**

A. It is unlawful for any person:

1. who is a registrant to distribute a controlled substance classified in Schedules I or II, except pursuant to an order form as required by Sec. 8-31-9;
2. to intentionally use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended or issued to another person;
3. to intentionally acquire or obtain, or attempt to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;
4. to intentionally furnish false or fraudulent material information in, or omit any material information from, any application, report or other document required to be kept; or
5. to intentionally make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing, upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

B. Any person who violates this section is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-31-17.1 Possession, Delivery or Manufacture of Drug Paraphernalia Prohibited;  
Exceptions

A. It is unlawful for a person to use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this Article. The provisions of this subsection do not apply to a person who is in possession of hypodermic syringes or needles at the time the person is directly and immediately engaged in a harm reduction program through or approved by the Contemporary Court.

B. It is unlawful for a person to deliver, possess with intent to deliver or manufacture with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this Article. The provisions of this subsection do not apply to:

1. health care workers while they are directly and immediately engaged in activities related to a harm reduction program through or approved by the Contemporary Court; or

2. the sale or distribution of hypodermic syringes and needles by pharmacists licensed in accordance with governing laws and regulations.

C. A person who violates the provisions of Subsection A of this section is subject to a fine of fifty dollars (\$50.00). A person who violates the provisions of Subsection B of this section is guilty of a Class 5 offense.

D. A person eighteen years of age or over who violates the provisions of Subsection B of this section by delivering drug paraphernalia to a person under eighteen years of age and who is at least three years the person's junior is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-31-18 Penalties Under Other Laws

Any penalty imposed for violation of this Article is in addition to any civil or administrative penalty or sanction otherwise provided by law.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-31-19 Overdose Prevention; Limited Immunity

A. A person who, in good faith, seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession of a controlled substance pursuant to the provisions of Sec. 8-31-15 if the evidence for the charge of possession of a controlled substance was gained as a result of the seeking of medical assistance.

B. A person who experiences a drug-related overdose and is in need of medical assistance shall not be charged or prosecuted for possession of a controlled substance pursuant to the provisions of Sec. 8-31-15 if the evidence for the charge of possession of a controlled substance was gained as a result of the overdose and the need for medical assistance.

C. The act of seeking medical assistance for someone who is experiencing a drug-related overdose may be used as a mitigating factor in a criminal prosecution.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-31-20 Conditional Discharge for Possession as First Offense

A. If any person who has not previously been convicted of violating the laws of any state or any tribe, or any laws of the United States relating to narcotic drugs, hallucinogenic or depressant or stimulant substances, is found guilty of a violation of Sec. 8-31-15, after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place him on probation upon reasonable conditions and for a period, not to exceed one year, as the court may prescribe.

B. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against the person and discharge him from probation before the expiration of the maximum period prescribed from the person's probation.

C. If during the period of his probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt, but a nonpublic record shall be retained by the Contemporary Court solely for the purpose of use by the court in determining whether or not, in subsequent proceedings, the person qualifies under this section. A discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the penalties prescribed under Sec. 8-31-15 for second or subsequent convictions or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

D. Upon the dismissal of a person and discharge of the proceedings against him under this section, a person, if he was not over eighteen years of age at the time of the offense, may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, trial, finding or plea of guilty, and dismissal and discharge pursuant to this section except nonpublic records filed with the Contemporary Court. If the court determines, after hearing, that the person was dismissed and the proceedings against him discharged and that he was not over eighteen years of age at the time of the offense, it shall enter the order. The effect of the order shall be to restore the person, in the contemplation of the law, to the status he occupied before the arrest or indictment or information. No person in whose behalf an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or

acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-31-21 Probationary Period

Notwithstanding any other provision of law, the court may place on probation for a period not to exceed one year any person convicted of a violation of this Article where the maximum length of the term of imprisonment is one year or less if:

- A. the judge does not impose a prison sentence; or
- B. the judge suspends all of any prison sentence imposed.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-31-22 Powers of Enforcement Personnel

Any law enforcement officer commissioned by the Pueblo may:

- A. serve search warrants and arrest warrants;
- B. make arrests without warrant for any offense under this Article in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this Article which may constitute a felony offense; or
- C. make seizures of property pursuant to this Article.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-31-23 Forfeitures; Property Subject

The following are subject to forfeiture:

- A. all raw materials, products and equipment of any kind, including firearms that are used or intended for use in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance or controlled substance analog in violation of this Article;
- B. all property that is used or intended for use as a container for property described in Subsection A of this section;
- C. all conveyances, including aircraft, vehicles or vessels, which are used or intended for use to transport or in any manner to facilitate the transportation for the purpose of sale of property described in Subsection A of this section;

D. all books, records and research products and materials, including formulas, microfilm, tapes and data, that are used or intended for use in violation of this Article;

E. narcotics paraphernalia or money which is a fruit or instrumentality of the crime;

F. notwithstanding Subsection C of this section:

1. no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this Article;

2. a conveyance shall not be subject to forfeiture under this section by reason of any act or omission established for the owner to have been committed or omitted without the owner's knowledge or consent;

3. a conveyance is not subject to forfeiture for a violation of law the penalty for which is a Class 5 offense; and

4. a forfeiture of a conveyance encumbered by a bona fide security interest shall be subject to the interest of a secured party if the secured party neither had knowledge of nor consented to the act or omission; and

G. all drug paraphernalia, as defined by Section 8-31-1(N).

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec 8-31-24 Forfeiture; Procedure

The provisions of Article 44 apply to the seizure, forfeiture and disposal of property subject to forfeiture and disposal pursuant to this Article.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec 8-31-25 Summary Forfeiture

A. Controlled substances listed in Schedule I or controlled substance analogs of substances listed in Schedule I that are possessed, transferred, sold or offered for sale in violation of this Article are contraband and shall be seized and summarily forfeited to the Pueblo.

B. Controlled substances listed in Schedule I or controlled substance analogs of substances listed in Schedule I which are seized or come into the possession of the Pueblo, the owners of which are unknown, are contraband and shall be summarily forfeited to the Pueblo.

C. Species of plants from which controlled substances in Schedules I and II or controlled substance analogs of substances listed in Schedules I and II may be derived which have been planted or cultivated in violation of this Article, or of which the owners or cultivators are unknown or which are wild growths, may be seized and summarily forfeited to the Pueblo.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-31-26 Burden of Proof for Exemptions or Exceptions

It is not necessary for the Pueblo to negate any exemption or exception in this Article in any complaint or other pleading or in any trial, hearing or other proceeding under this Article. The burden of proof of any exemption or exception is upon the person claiming it.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-31-27 Anabolic Steroids; Possession; Distribution; Penalties; Notice

A. It is unlawful for any person to intentionally possess anabolic steroids not prescribed by a license doctor. Any person who violates this subsection is guilty of a Class 5 offense.

B. It is unlawful for any person to intentionally distribute or possess with intent to distribute anabolic steroids. Any person who violates this subsection is guilty of a Class 4 offense.

C. It is unlawful for any person eighteen years of age or older to intentionally distribute anabolic steroids to a person under eighteen years of age. Any person who violates this subsection is guilty of a Class 3 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **ARTICLE 32 – FOREST FIRES**

#### Sec. 8-32-1 Fires Extinguished by Officers; Responsibility for Costs

A. As used in this section, “forest fire” means a fire burning uncontrolled on Pueblo Lands covered wholly or in part by timber, brush, grass, grain or other inflammable vegetation.

B. A person who willfully or recklessly sets a forest fire or causes a forest fire to be set on Pueblo Lands for which efforts to control or extinguish the fire are exerted by the Department of Natural Resources of the Pueblo; an agency under agreement with the Pueblo; or any fire protection agency of the United States may be liable for the costs incurred, including expenses for fighting the fire and costs of investigation.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-32-2 Civil Action for Damages

If any person shall set on fire any woods, marshes, prairies, so as thereby to occasion any damage to any other person on Pueblo Lands, such person shall make satisfaction in double damages to the party injured, to be recovered by civil action.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 33 FRAUD AND FALSE DEALING**

### **Sec. 8-33-1    Sale of Indian-Made Articles as Genuine**

It is unlawful to barter, trade, sell or offer for sale or trade any article represented as produced by an Indian unless the article is produced, designed or created by the labor or workmanship of an Indian.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **Sec. 8-33-2    Definitions**

#### **A.    “Indian tribe” means:**

1.    any tribe, band, nation, Alaska native village or other organized group or community that is eligible for the special programs and services provided by the United States government to Indians because of their status as Indians; or
2.    any tribe that has been formally recognized as an Indian tribe by a state legislature;

#### **B.    “Indian” means:**

1.    any person who is an enrolled member of an Indian tribe as evidenced by a tribal enrollment card or certified tribal records; or
2.    any person who can meet the minimum qualifications for services offered by the United States government to Indians because of their special status as Indians as evidenced by a certificate of degree of Indian blood card;

#### **C.    “authentic Indian arts and crafts” means any product, including traditional or contemporary Indian arts, that:**

1.    are Indian handmade; and
2.    are not made by machine;

#### **D.    “person” means any individual, firm, association, corporation, partnership or any other legal entity;**

#### **E.    “made by machine” means the producing or reproducing of a product in mass production by mechanically stamping, blanking, weaving or offset printing;**

#### **F.    “Indian handmade” means any product in which the entire shaping and forming of the product from raw materials and its finishing and decoration were accomplished by Indian hand labor and manually controlled methods that permit the maker to control and vary the construction, shape, design or finish of each part of each individual product, but does not exclude the use of findings, hand tools and equipment for buffing, polishing, grinding, drilling, sawing or sewing;**



G. “Indian crafted” means any item that is made by an Indian when it is not entirely Indian handmade or is at least in part made by machine, including Indian-assembled and Indian-decorated items and other items consistent with this definition;

H. “findings” means an ingredient part of the product that adapts the product for wearing or display, including silver beads used in jewelry containing Indian handmade adornments in addition to beads, leather backing, binding material, bolo tie clips, tie bar clips, tie-tac pins, earring pins, earring clips, earring screw backs, cuff link toggles, money clips, pin stems, combs and chains;

I. “product” means the finished tangible arts or crafts;

J. “raw materials” means any material that can be converted by manufacture, processing or a combination of manufacture and processing into a new and useful product, and includes:

1. “naturally occurring material,” which means any material created and produced by nature;

2. “natural material,” which means any material created and produced by nature that is only altered in shape, form, finish or color as long as the color change is the result of finishing or polishing agents used that do not penetrate the surface of the material by more than one millimeter;

3. “treated material,” which means any material created and produced by nature that has been altered by man-made processes that leave the material in its original shape and size after processing, but alter the color, hardness or character of the material, which may be formed, shaped or finished after treating;

4. “reconstructed material,” which means any material created and produced in nature that has been altered by man-made processes that change the color, hardness, shape or character of the material, provided that more than fifty percent of the original naturally occurring material is contained in the product after processing, but excludes synthetic material; and

K. “synthetic material” means any material that imitates natural materials and is man-made or contains fifty percent or less of the original naturally occurring materials.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### Sec. 8-33-3 Purpose of Title

The purpose of this Article is to protect the public and the Indian craftsman under the police powers of the Pueblo from false representation in the sale, trade, purchase or offering for sale of Indian arts and crafts.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-33-4 Inquiry as to Producer; Duty of Inquiry; Election to Label Authentic Indian Arts and Crafts

A. It is the duty of every person selling or offering for sale a product that is represented to be authentic Indian arts or crafts to make due inquiry of his suppliers concerning the true nature of the materials, product design and process of manufacture to determine whether the product may be lawfully represented as authentic Indian arts or crafts.

B. Each person may elect to label or otherwise clearly and conspicuously disclose as authentic Indian arts and crafts all articles that are authentic Indian arts and crafts in accordance with this Article.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-33-5 Unlawful Acts

It is unlawful for any person to:

A. sell or offer for sale any products represented to be Indian handmade or authentic Indian arts and crafts unless such products are in fact Indian handmade or authentic Indian arts and crafts;

B. sell or offer for sale any products represented to be Indian crafted unless such products are in fact Indian crafted;

C. represent that any Indian arts and crafts product is made of a material, including natural material, unless it is made of that material;

D. fail to disclose in writing that any Indian arts and crafts product is made of treated material, reconstructed material or synthetic material;

E. solicit or buy for resale as authentic Indian arts and crafts any products that are known in fact not to be authentic; or

F. prepare, disseminate or otherwise engage in any unfair or deceptive trade practice, including any false, misleading or deceptive advertising, or any unconscionable trade practice, regarding Indian arts or crafts.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-33-6 Violation of Act; Penalties

A. In an action brought for a violation under the provisions of this Article, the Contemporary Court may order temporary or permanent injunctive relief. The Contemporary Court shall order restitution and such other relief as may be necessary to redress injury to any person resulting from the violation.

B. In any action brought under this section, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by the court, may recover, on behalf of the Pueblo, a civil penalty not to exceed five thousand dollars (\$5,000) per violation.

C. Any person willfully and knowingly violating the provisions of this Article where the violation involves property valued at two hundred fifty dollars (\$250) or less is guilty of a Class 6 offense.

D. Any person willfully and knowingly violating the provisions of this Article where the violation involves property valued in excess of two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500) is guilty of a Class 5 offense.

E. Any person willfully and knowingly violating the provisions of this Article where the violation involves property valued in excess of five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500) is guilty of a Class 4 offense.

F. Any person willfully and knowingly violating the provisions of this Article where the violation involves property valued in excess of two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a Class 3 offense.

G. Any person willfully and knowingly violating the provisions of this Article where the violation involves property valued in excess of twenty thousand dollars (\$20,000) is guilty of a Class 2 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### **Sec. 8-33-7 Private Right of Action; Damages**

Any person who suffers financial injury or damages by reason of any conduct declared in violation of the provisions of this Article may sue in Contemporary Court. Upon a showing that this Article is being violated, the court may award damages and order injunctive relief and shall award the cost of the suit, including reasonable attorneys' fees. Where the court finds that the party charged with violating this Article has willfully violated this Article, the court may award treble damages to the party complaining of the violation.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **ARTICLE 34 - TELECOMMUNICATIONS SERVICE THEFT**

#### **Sec. 8-34-1 Obtaining Telecommunications Service with Intent to Defraud; Definitions**

For the purposes of this Article:

A. "credit card" means an identification card or plate issued to a person, firm or corporation by any person, firm or corporation engaged in the furnishing of telecommunications service, which permits the person, firm or corporation to whom the card has been issued to obtain telecommunications service on credit;

B. “credit card number” means the card number appearing in a credit card; and

C. “telecommunication service” means service furnished by a public utility, including a telephone company, by which there is accomplished, or may be accomplished, the sending or receiving of information, data, messages, writing, signs, signals, pictures and sound of all kinds, by aid of wire, cable, radio or other means or apparatus.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-34-2 Crime to Procure or to Attempt to Procure Telecommunications Service without Paying Charge; Crime to Make, Possess, Sell, Give or Transfer Certain Devices for Certain Purposes; Penalty

A. It is unlawful for a person, with intent to defraud a person, firm or corporation, to obtain or to attempt to obtain any telecommunications service without paying the lawful charge, in whole or in part, by any of the following means:

1. charging the service to an existing telephone number or credit card number without the authority of the subscriber or the legitimate holder;
2. charging the service to a nonexistent, false, fictitious or counterfeit telephone number or credit card number or to a suspended, terminated, expired, canceled or revoked telephone number or credit card number;
3. rearranging, tampering with or making electrical, acoustical, induction or other connection with any facilities or equipment;
4. using a code, prearranged scheme or other stratagem or device whereby the person in effect sends or receives information; or
5. using any other contrivance, device or means to avoid payment of the lawful charges, in whole or in part, for the service.

B. This section shall apply when the telecommunications service either originates or terminates, or both, on Pueblo Lands or when charges for the service would have been billable in normal course by the public utility providing the service on Pueblo Lands but for the fact that the service was obtained or attempted to be obtained by one or more of the means set forth in this section.

C. Whoever violates this section when the charges for the telecommunications service obtained or attempted to be obtained are two hundred fifty dollars (\$250) or less is guilty of a Class 5 offense.

D. It is unlawful for a person under circumstances evidencing an intent to use or employ any instrument, apparatus, equipment or device described in Paragraph (1) of this subsection or to allow the same to be used or employed for the purpose described in Paragraph (1) of this subsection or knowing or having reason to believe that the same is intended to be so used or that the plans and instructions described in Paragraph (2) of this subsection are intended to be used for making or assembling the instrument, apparatus, equipment or device:

1. to make or possess any instrument, apparatus, equipment or device designed, adapted or that can be used either:

a. to obtain telecommunications service in violation of this section; or  
b. to conceal or to assist another to conceal from any supplier of telecommunications service or from any lawful authority the existence or place of origin or of destination of any telecommunications service; or

2. to sell, give or otherwise transfer to another or to offer or advertise for sale any instrument, apparatus, equipment or device described in Paragraph (1) of this subsection or plans or instructions for making or assembling the same.

E. Whoever violates Subsection D of this section is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-34-3 Illegal Service; Prohibited Acts; Penalties

A. It is unlawful for any person to:

1. obtain or attempt to obtain telecommunications service by trick, artifice, deception, use of an illegal device or decoder or other fraudulent means without authorization of the provider;

2. assist or instruct any person to obtain or attempt to obtain any telecommunications service without authorization of the provider;

3. make or attempt to make or assist any person to make or maintain a telecommunications service connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of telecommunications service without authorization of the provider; or

4. make or maintain any modification or alteration to any device that was installed with the authorization of the provider for the purpose of intercepting or receiving any telecommunications service without authorization of the provider.

B. Any person who violates this section is guilty of a Class 5 offense upon conviction for a first offense and shall be punished by a fine of up to five hundred dollars (\$500); and upon conviction for a second or subsequent offense, is guilty of a Class 4 offense

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **ARTICLE 35 – WORTHLESS CHECKS**

#### Sec. 8-35-1 Definitions

As used in this Article:

A. “check” means any check, draft or written order for money;

B. “person” means any person, firm or corporation;

- C. “draw” means the making, drawing, uttering or delivering a check;
- D. “thing of value” includes money, property, services, goods and wares; and lodging;
- E. “credit” means an arrangement or understanding with the drawer for the payment of the check.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-35-2 Unlawful to Issue

It is unlawful for a person to issue in exchange for anything of value, with intent to defraud, any check, draft or order for payment of money upon any bank or other depository, knowing at the time of the issuing that the offender has insufficient funds in or credit with the bank or depository for the payment of such check, draft or order in full upon its presentation.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-35-3 Exceptions

This Article does not apply to:

- A. any check where the payee or holder knows or has been expressly notified prior to the drawing of the check or has reason to believe that the drawer did not have on deposit or to his credit with the drawee sufficient funds to insure payment on its presentation; or
- B. any post-dated check.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-35-4 Intent to Defraud; How Established

In the prosecution of offenses under this Article, the following rules of evidence shall govern:

- A. if the maker or drawer of a check, payment of which is refused by the bank or depository upon which it is drawn because of no account in the name of the maker or drawer in the bank, proof of the fact that the maker or drawer had no account in the bank or depository upon which the check is drawn shall be prima facie evidence of an intent to defraud and of knowledge of insufficient funds in or credit with the bank or depository with which to pay the draft;
- B. if the maker or drawer of a check, payment of which is refused by the bank or depository upon which it is drawn because of insufficient funds or credit in the account of the maker or drawer in the bank or depository, fails, within three business days after notice to him

that the check was not honored by the bank or depository, to pay the check in full, together with any protest fees or costs thereon, such failure shall constitute prima facie evidence of a knowledge of the insufficiency of funds in the bank or depository at the time of the making or drawing of the check and of an intent to defraud.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-35-5 Notice

Notice as used in this Article shall consist of either notice given to the person entitled thereto in person or notice given to such person in writing. The notice in writing is presumed to have been given when deposited as certified matter in the United States mail, addressed to the person at his address as it appears on the check.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **ARTICLE 36 – SEXUALLY ORIENTED MATERIAL HARMFUL TO MINORS**

#### Sec. 8-36-1 Definitions

As used in this Article:

- A. “minor” means any unmarried person who has not reached his eighteenth birthday;
- B. “nudity” means the showing of the male or female genitals, pubic area or buttocks with less than a full opaque covering, or the depiction of covered male genitals in a discernibly turgid state;
- C. “sexual conduct” means act of masturbation, sodomy, sexual intercourse or physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks or, if such person be female, breast;
- D. “sexual excitement” means the condition of human male or female genitals when in a state of sexual stimulation or arousal;
- E. “sado-masochistic abuse” means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained;
- F. “harmful to minors” means that quality of any description of representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse, when it:
  - 1. predominantly appeals to the prurient, shameful or morbid interest of minors; and
  - 2. is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

3. is utterly without redeeming social importance for minors; and

G. “knowingly” means having general knowledge of, or reason to know, or a belief or reasonable ground for belief which warrants further inspection or inquiry or both, of:

1. the character and content of any material described herein, which is reasonably susceptible of examination by the defendant;
2. the age of the minor.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-36-2 Offenses; Books; Pictures

A. It is unlawful for a person to knowingly sell, deliver, distribute, display for sale or provide to a minor, or knowingly to possess with intent to sell, deliver, distribute, display for sale or provide to a minor:

1. any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body, or any replica, article or device having the appearance of either male or female genitals which depicts nudity, sexual conduct, sexual excitement or sado-masochistic abuse and which is harmful to minors; or
2. any book, pamphlet, magazine, printed matter however produced or sound recording which contains any matter enumerated in Subsection A of this section or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors.

B. Whoever violates this section commits a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-36-2.1 Offenses; Retail Display

A. It is unlawful for any person, offering for sale in a retail establishment open to the general public any book, magazine or other printed material the cover of which depicts nudity, sadomasochistic abuse, sexual conduct or sexual excitement and which is harmful to minors, to knowingly exhibit that book, magazine or material in that establishment in such a way that it is on open display to, or within the convenient reach of, minors who may frequent the retail establishment. Such books, magazines or printed materials may be displayed behind an opaque covering which conceals the depiction of nudity, sado-masochistic abuse, sexual conduct or sexual excitement, provided that those books, magazines or printed materials are not within the convenient reach of minors who may frequent the retail establishment.

B. It is unlawful for any person, offering for sale in a retail establishment open to the general public any book, magazine or other printed material the content of which exploits, is devoted to or is principally made up of descriptions or depictions of nudity, sado-masochistic abuse, sexual conduct or sexual excitement and which are harmful to minors, to knowingly



exhibit that book, magazine or material in that establishment in such a way that it is within the convenient reach of minors who may frequent the retail establishment.

C. Whoever violates this section commits a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### Sec. 8-36-3 Offenses; Motion Pictures; Plays

A. It is unlawful for any person knowingly to exhibit to a minor or knowingly to provide to a minor an admission ticket or pass or knowingly to admit a minor to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors.

B. Whoever violates this section commits a Class 6 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-36-3.1 Child Solicitation by Electronic Communication Device

A. Child solicitation by electronic communication device consists of a person knowingly and intentionally soliciting a child under sixteen years of age, by means of an electronic communication device, to engage in sexual intercourse, sexual contact or in a sexual or obscene performance, or to engage in any other sexual conduct when the perpetrator is at least four years older than the child.

B. Whoever commits child solicitation by electronic communication device is guilty of a Class 3 offense.

C. As used in this section, “electronic communication device” means a computer, video recorder, digital camera, fax machine, telephone, cellular telephone, pager, audio equipment or any other device that can produce an electronically generated image, message or signal.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-36-3.2 Criminal Sexual Communication with a Child; Penalty

A. Criminal sexual communication with a child consists of a person knowingly and intentionally communicating directly with a specific child under sixteen years of age by sending the child obscene images of the person’s intimate parts by means of an electronic communication device when the perpetrator is at least four years older than the child.

B. Whoever commits sexual communication with a child is guilty of a Class 3 offense.

C. As used in this section:

1. “electronic communication device” means a computer, video recorder, digital camera, fax machine, telephone, pager or any other device that can produce an electronically generated image; and

2. “intimate parts” means the primary genital area, groin, buttocks, anus or breast.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-36-4 Exclusions; Defenses

No person shall be guilty of violating:

A. Sections 8-36-2 through 8-36-3.2, where such person had reasonable cause to believe that the minor involved had reached his eighteenth birthday, and such minor exhibited to such person a draft card, driver’s license, birth certificate or other official or apparently official document purporting to establish that such minor had reached his eighteenth birthday; or

B. Sections 8-36-2 through 8-36-3, if the minor was accompanied by his parent or guardian, or the parent or guardian has in writing waived the application of this act either generally or with reference to the particular transaction; or

1. where such person had reasonable cause to believe that the person was the parent or guardian of the minor; or

2. where such person is a bona fide school, museum or public library, or is acting in his capacity as an employee of such organization, or as a retail outlet affiliated with and serving the educational purposes of such organization.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **ARTICLE 37 – FALSE REPORT**

#### Sec. 8-37-1 False Report; Penalty

It is unlawful for any person to intentionally make a report to a law enforcement agency or official, which report he knows to be false at the time of making it, alleging a violation by another person of the provisions of the Criminal Code. Any person violating the provisions of this section is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 38 – KICKBACK, BRIBE OR REBATE**

### **Sec. 8-38-1    Soliciting or Receiving Illegal Kickback**

Whoever knowingly solicits or receives any remuneration in the form of any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind from a person:

A.        return for referring an individual to that person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part with Pueblo money; or

B.        in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facilities, services, or items for which payment may be made in whole or in part with Pueblo money;

shall be guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **Sec. 8-38-2    Offering or Paying Illegal Kickback**

Whoever knowingly offers or pays any remuneration in the form of any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

A.        to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part with Pueblo money; or

B.        to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facilities, services, or items for which payment may be made in whole or in part with Pueblo money;

shall be guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **Sec. 8-38-3    Exceptions**

This Article shall not apply to:

A.        a discount or other reduction in price obtained by a provider of services or other entity if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity; or

B.        any amount paid by an employer to an employee who has a bona fide employment relationship with such employer for employment in the provision of covered items or services.

## **ARTICLE 39 – COMPUTER CRIMES**

### **Sec. 8-39-1    Definitions**

As used in this Article:

A.     “access” means to program, execute programs on, intercept, instruct, communicate with, store data in, retrieve data from or otherwise make use of any computer resources, including data or programs of a computer, computer system, computer network or database;

B.     “computer” includes an electronic, magnetic, optical or other high-speed data processing device or system performing logical, arithmetic or storage functions and includes any property, data storage facility or communications facility directly related to or operating in conjunction with such device or system. The term does not include an automated typewriter or typesetter or a single display machine in and of itself, designed and used solely within itself for word processing, or a portable hand-held calculator, or any other device which might contain components similar to those in computers but in which the components have the sole function of controlling the device for the single purpose for which the device is intended;

C.     “computer network” means the interconnection of communication lines and circuits with a computer or a complex consisting of two or more interconnected computers;

D.     “computer program” means a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from a computer system;

E.     “computer property” includes a financial instrument, data, databases, computer software, computer programs, documents associated with computer systems and computer programs, or copies, whether tangible or intangible, and data while in transit;

F.     “computer service” includes computer time, the use of the computer system, computer network, computer programs or data prepared for computer use, data contained within a computer network and data processing and other functions performed, in whole or in part, by the use of computers, computer systems, computer networks or computer software;

G.     “computer software” means a set of computer programs, procedures and associated documentation concerned with the operation and function of a computer system;

H.     “computer system” means a set of related or interconnected computer equipment, devices and software;

I.     “data” means a representation of information, knowledge, facts, concepts or instructions which are prepared and are intended for use in a computer, computer system or computer network;

J. “database” means any data or other information classified, processed, transmitted, received, retrieved, originated, switched, stored, manifested, measured, detected, recorded, reproduced, handled or utilized by a computer, computer system, computer network or computer software; and

K. “financial instrument” includes any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction, authorization mechanism, marketable security or any other computerized representation thereof.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-39-2 Computer Access with Intent to Defraud or Embezzle

A person who knowingly and willfully accesses or causes to be accessed a computer, computer system, computer network or any part thereof with the intent to obtain, by means of embezzlement or false or fraudulent pretenses, representations or promises, money, property or anything of value when the:

A. money, property or other thing has a value of two hundred fifty dollars (\$250) or less, is guilty of a Class 6 offense;

B. money, property or other thing has a value of more than two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500), is guilty of a Class 5 offense;

C. money, property or other thing has a value of more than five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500), is guilty of a Class 4 offense;

D. money, property or other thing has a value of more than two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000), is guilty of a Class 3 offense; or

E. money, property or other thing has a value of more than twenty thousand dollars (\$20,000), is guilty of a Class 2 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-39-3 Computer Abuse

A person who knowingly, willfully and without authorization, or having obtained authorization, uses the opportunity the authorization provides for purposes to which the authorization does not extend:

A. directly or indirectly alters, changes, damages, disrupts or destroys any computer, computer network, computer property, computer service or computer system when the:

1. damage to the computer property or computer service has a value of two hundred fifty dollars (\$250) or less, is guilty of a Class 6 offense;
2. damage to the computer property or computer service has a value of more than two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500), is guilty of a Class 5 offense;
3. damage to the computer property or computer service has a value of more than five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500), is guilty of a Class 4 offense;
4. damage to the computer property or computer service has a value of more than two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000), is guilty of a Class 3 offense; or
5. damage to the computer property or computer service has a value of more than twenty thousand dollars (\$20,000), is guilty of a Class 2 offense; or

B. directly or indirectly introduces or causes to be introduced data that the person knows to be false into a computer, computer system, computer network, computer software, computer program, database or any part thereof with the intent of harming the property or financial interests or rights of another person is guilty of a Class 4 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-39-4 Unauthorized Computer Use

A person who knowingly, willfully and without authorization, or having obtained authorization, uses the opportunity the authorization provides for purposes to which the authorization does not extend, directly or indirectly accesses, uses, takes, transfers, conceals, obtains, copies or retains possession of any computer, computer network, computer property, computer service, computer system or any part thereof, when the:

- A. damage to the computer property or computer service has a value of two hundred fifty dollars (\$250) or less, is guilty of a Class 6 offense;
- B. damage to the computer property or computer service has a value of more than two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500), is guilty of a Class 5 offense;
- C. damage to the computer property or computer service has a value of more than five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500), is guilty of a Class 4 offense;
- D. damage to the computer property or computer service has a value of more than two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000), is guilty of a Class 3 offense; or
- E. damage to the computer property or computer service has a value of more than twenty thousand dollars (\$20,000), is guilty of a Class 2 offense.

**Sec. 8-39-5    Forfeiture of Property**

A.     The following are subject to forfeiture:

1.     all computer property, equipment or products of any kind that have been used, manufactured, acquired or distributed in violation of this Article;
2.     all materials, products and equipment of any kind that are used or intended for use in manufacturing, using, accessing, altering, disrupting, copying, concealing, destroying, transferring, delivering, importing or exporting any computer property or computer service in violation of this Article;
3.     all books, records and research products and materials involving formulas, microfilm, tapes and data that are used or intended for use in violation of this Article;
4.     all conveyances, including aircraft, vehicles or vessels, that are used or intended for use to transport or in any manner to facilitate the transportation of property described in this subsection for the purpose of violating this Article;
5.     all property, real, personal or mixed, that has been used or intended for use, maintained or acquired in violation of this Article; and
6.     all money or proceeds that constitute an instrumentality or derive from a violation of this Article.

B.     The provisions of Article 44 apply to the seizure, forfeiture and disposal of property subject to forfeiture pursuant to Subsection A of this section.

**ARTICLE 40 – UNLAWFUL TICKET RESALE**

**Sec. 8-40-1    Unlawful Ticket Resale**

A.     Unlawful ticket resale consists of selling, offering for sale or attempting to sell any ticket, privilege, license, admission or pass to any entertainment or sporting event at a price greater than the price charged at the place of admission or printed on the ticket.

B.     The sale of each ticket, privilege, license, admission or pass in violation of this section shall constitute a separate offense.

C.     Nothing in this section shall prohibit charging a fee for services rendered in connection with the sale of a ticket privilege, license, admission or pass to an event if the fee is permitted pursuant to a contract between the ticket seller and the sponsor or promoter of the event.

D.     Whoever commits unlawful ticket resale is guilty of a Class 5 offense and upon conviction shall be punished by a fine up to five hundred dollars (\$500) or by imprisonment for a definite term of less than 90 days, or both.

## **ARTICLE 41– TOBACCO PRODUCTS, E-CIGARETTES AND NICOTINE LIQUID CONTAINERS**

### **Sec. 8-41-1    Definitions**

As used in this Article:

A.     “child-resistant” means a package or container that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean a package or container that all such children cannot open or obtain a toxic or harmful amount within a reasonable time;

B.     “e-cigarette”:

1.     means any electronic oral device, whether composed of a heating element and battery or an electronic circuit, that provides a vapor of nicotine or any other substances the use or inhalation of which simulates smoking; and

2.     includes any such device, or any part thereof, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or any other product, name or descriptor; but

3.     does not include any product regulated as a drug or device by the United States food and drug administration under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301 et seq.;

C.     “minor” means an individual who is less than eighteen years of age; and

D.     “nicotine liquid container” means a bottle or other container of any substance containing nicotine where the substance is sold, marketed or intended for use in an e-cigarette.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### **Sec. 8-41-2    Tobacco Products, E-Cigarettes and Nicotine Liquid Containers; Prohibited Sales**

A.     No person shall knowingly sell, offer to sell, barter or give a tobacco product, an e-cigarette or a nicotine liquid container to a minor.

B.     No minor shall procure or attempt to procure any tobacco product, e-cigarette or nicotine liquid container for the minor’s own use or for use by another minor.

C.     No person shall sell, offer to sell or deliver a tobacco product, an e-cigarette or a nicotine liquid container in a form other than an original factory-sealed package.

D.     No person shall sell or offer to sell any nicotine liquid container at retail on this Pueblo unless such container is child-resistant; except that for the purpose of this subsection,



“nicotine liquid container” does not include a cartridge that is pre-filled and sealed by the manufacturer and that is not intended to be opened by the consumer.

E. The online internet sale of e-cigarettes or nicotine liquid containers to a minor on Pueblo Lands is prohibited.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-41-3 Documentary Evidence of Age and Identity

Evidence of the age and identity of the person may be shown by any document that contains a picture of the person issued by a federal, state, county, tribal or municipal government, including a motor vehicle driver’s license or an identification card issued to a member of the armed forces.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-41-4 Refusal to Sell Tobacco Products, E-Cigarettes or Nicotine Liquid Containers to Person Unable to Produce Identity Card

A person selling goods at retail or wholesale may refuse to sell tobacco products, e-cigarettes or nicotine liquid containers to a person who is unable to produce an identity card as evidence that the person is eighteen years of age or over.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-41-5 Presenting False Evidence of Age or Identity

No minor shall present any written, printed or photostatic evidence of age or identity that is false for the purpose of procuring or attempting to procure any tobacco products, e-cigarettes or nicotine liquid containers.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-41-6 Vending Machines; Restrictions on Sales of Tobacco Products, E-Cigarettes and Nicotine Liquid Containers

A. Except as provided in Subsections B and C of this section:

1. a person shall not sell tobacco products, e-cigarettes or nicotine liquid containers at a retail location on Pueblo Lands by any means other than a direct, face-to-face exchange between the customer and the seller or the seller’s employee; and

2. a person selling goods at a retail location on Pueblo Lands shall not use a self-service display for tobacco products, e-cigarettes or nicotine liquid containers. As used in this subsection, “self-service display” means a display to which the public has access without the assistance of the seller or the seller’s employee.

B. Tobacco products, e-cigarettes and nicotine liquid containers may be sold by vending machines only in age-controlled locations where minors are not permitted.

C. The provisions of this section do not apply to written, telephonic or electronic sales of tobacco products.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-41-7 Distribution of Tobacco Products, E-Cigarettes or Nicotine Liquid Containers as Free Samples Prohibited; Exception

A. A person shall not provide free samples of tobacco products, e-cigarettes or nicotine liquid containers to a minor.

B. The provisions of Subsection A of this section shall not apply to an individual who provides free samples of tobacco products, e-cigarettes or nicotine liquid containers in connection with the practice of cultural or ceremonial activities in accordance with the federal American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a or its successor act.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-41-8 Signs; Point of Sale

A person, firm, corporation, partnership or other entity engaged in the sale at retail of tobacco products, e-cigarettes or nicotine liquid containers shall prominently display in the place where tobacco products, e-cigarettes or nicotine liquid containers are sold and where a tobacco product, e-cigarette or nicotine liquid container vending machine is located a printed sign or decal that reads as follows:

“A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES A TOBACCO PRODUCT, AN E-CIGARETTE OR A NICOTINE LIQUID CONTAINER IS SUBJECT TO A FINE OF UP TO \$100. A PERSON WHO SELLS A TOBACCO PRODUCT, AN E-CIGARETTE OR A NICOTINE LIQUID CONTAINER TO A PERSON LESS THAN 18 YEARS OF AGE IS SUBJECT TO A FINE OF UP TO FIVE HUNDRED DOLLARS (\$500.00).”

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-41-9 Penalty

A. Any person who violates this Article is guilty of a Class 5 offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-41-10 Applicability

The provisions of this Article do not apply to the lawful purchase or use by a minor of a tobacco-cessation product approved by the federal food and drug administration.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

**ARTICLE 42– HUMAN TRAFFICKING**

Sec. 8-42-1 Human Trafficking

A. Human trafficking consists of a person knowingly:

1. recruiting, soliciting, enticing, transporting or obtaining by any means another person with the intent or knowledge that force, fraud or coercion will be used to subject the person to labor, services or commercial sexual activity;
2. recruiting, soliciting, enticing, transporting or obtaining by any means a person under the age of eighteen years with the intent or knowledge that the person will be caused to engage in commercial sexual activity; or
3. benefiting, financially or by receiving anything of value, from the labor, services or commercial sexual activity of another person with the knowledge that force, fraud or coercion was used to obtain the labor, services or commercial sexual activity.

B. Whoever commits human trafficking is guilty of a Class 3 offense; except if the victim is under the age of:

1. sixteen, the person is guilty of a Class 2 offense; or
2. thirteen, the person is guilty of a Class 1 offense.

C. Prosecution pursuant to this Article shall not prevent prosecution pursuant to any other provision of the law when the conduct also constitutes a violation of that other provision.

D. In a prosecution pursuant to this Article, a human trafficking victim shall not be charged with accessory to the crime of human trafficking.

E. A person convicted of human trafficking shall, in addition to any other punishment, be ordered to make restitution to the victim for the gross income or value of the victim's labor or services and any other actual damages.

F. As used in this Article:

1. "coercion" means:
  - a. causing or threatening to cause harm to any person;
  - b. using or threatening to use physical force against any person;
  - c. abusing or threatening to abuse the law or legal process;

d. threatening to report the immigration status of any person to governmental authorities; or

e. knowingly destroying, concealing, removing, confiscating or retaining any actual or purported government document of any person; and

2. “commercial sexual activity” means any sexual act or sexually explicit exhibition for which anything of value is given, promised to or received by any person.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 43 – SENTENCING**

### **Sec. 8-43-1    Imprisonment and Fines**

The Contemporary Court may impose the following periods of incarceration and fines against a person who is convicted of violating the Tribal Code:

A.     The maximum sentence imposed by the section of the Tribal Code under which the defendant was convicted; or

B.     Where no sentence is imposed by the section of the Criminal Code under which the defendant was convicted:

1.     A maximum of three hundred sixty-four (364) days in custody or a fine of up to \$5,000, or both such period of custody and fine, for an offense classified as a Class 1 offense;

2.     A maximum of three hundred sixty-four (364) days in custody or a fine of up to \$4,000, or both such period of custody and fine, for an offense classified as a Class 2 offense;

3.     A maximum of three hundred sixty-four (364) days in custody or a fine of up to \$3,000, or both such period of custody and fine, for an offense classified as a Class 3 offense;

4.     A maximum of three hundred sixty-four (364) days in custody or a fine of up to \$2,000, or both such period of custody and fine, for an offense classified as a Class 4 offense;

5.     A maximum of three hundred sixty-four (364) days in custody or a fine of up to \$1,000, or both such period of custody and fine, for an offense classified as a Class 5 offense; and

6.     A maximum of one hundred eighty (180) days in custody or a fine of up to \$500, or both such period of custody and fine, for an offense classified as a Class 6 offense.

C.     Notwithstanding anything in this section, the Contemporary Court may not impose on any defendant sentenced under this section in a criminal proceeding a period of custody greater than three hundred sixty-four (364) days or impose a fine of more than \$5,000, or impose both such period of custody and fine, regardless of the number of crimes for which the defendant is convicted. For the purpose of this subsection, “a criminal proceeding” means a court proceeding in which one or more criminal charges that arise out of the same act or transaction or is connected with or constitute parts of a common scheme or plan, are brought against a person.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022; amended by Res. No. 2023-R-28, adopted June 13, 2023.

Sec. 8-43-2 Enhanced Sentencing

A. If all of the conditions of subsection (B) of this section are met, the Contemporary Court may impose the following criminal penalties, instead of the criminal penalties in Section 8-43-1, against a person who is convicted of committing a Class 1, 2, 3, or 4 offense under this Code:

- a. A maximum of three years (3) years in custody or a fine of up to \$5,000, or both such period of custody and fine, for an offense classified as a Class 1 offense;
2. A maximum of thirty (30) months in custody or a fine of up to \$4,500, or both such period of custody and fine, for an offense classified as a Class 2 offense;
3. A maximum of two (2) years in custody or a fine of up to \$3,000, or both such period of custody and fine, for an offense classified as a Class 3 offense; and
4. A maximum of eighteen (18) months in custody or a fine of up to \$2,000, or both such period of custody and fine, for an offense classified as a Class 4 offense.

B. The Contemporary Court may impose the sentences under subsection A of this section if:

1. prior to charging the defendant, the Pueblo has made the following publicly available via the Internet: notice that the Pueblo has adopted enhanced sentencing; the Pueblo's Criminal Code, Rules of Evidence, Rules of Criminal Procedure; the Code of Judicial Conduct; and any interpretive documents that relate to criminal justice and criminal procedures;
2. the defendant was represented in the criminal proceeding by an attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys and admitted to practice before the Contemporary Court, and who is in good standing in both jurisdictions, and in the case of an indigent defendant, the Pueblo provided defense counsel at no cost to the defendant;
3. the judge presiding over the case is a graduate of an ABA-accredited law school who is licensed to practice law by any jurisdiction in the United States and is in good standing, and has sufficient legal training to preside over criminal proceedings;
4. the defendant was provided with effective assistance of counsel equal to at least that guaranteed by the U.S. Constitution and was provided the right to an impartial jury; and
5. the Contemporary Court maintains a record of the criminal proceeding, including audio or other recording.

C. Notwithstanding anything in this section, the Contemporary Court may not impose on any defendant sentenced under this section in a criminal proceeding a period of custody greater than nine (9) years or a fine of more than \$15,000, or both such period of custody and fine, regardless of the number of crimes for which the defendant is convicted. For the purpose of this subsection, "a criminal proceeding" means a court proceeding in which one or more criminal charges that arise out of the same act or transaction or are connected with or constitute parts of a common scheme or plan, are brought against a person.

### Sec. 8-43-3 Place of Incarceration

A convicted defendant may be housed only in a tribal correctional facility approved by the Bureau of Indian Affairs for long-term incarceration, a federal prison, a state prison or county jail, or an “alternative rehabilitation center” operated by the Pueblo or another tribe.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### Sec. 8-43-4 Diversion Programs

The Contemporary Court may order a juvenile or adult offender into a diversion program in cases where a non-violent offense is committed. The Contemporary Court may appoint a probation officer, an appropriate agency, or, with regard to a traditional process, an appropriate person, to oversee the offender’s participation in and compliance with such diversion program. An offender who participates in a diversion program shall waive their right to a speedy trial.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### Sec. 8-43-5 Suspension or Deferral of Sentence

A. Unless the section under which a defendant has been convicted prohibits suspension or deferral of a sentence, the Contemporary Court may, on such terms as the court may impose, including house arrest, suspend or defer the imposition of a sentence and release the convicted person on probation.

B. The term of probation shall not exceed the maximum term allowed under the section violated by the defendant.

C. When a period of deferment expires without revocation, the defendant is relieved of any obligations imposed on him by the order of the court and has satisfied his criminal liability for the crime, the court shall enter a dismissal of the criminal charges.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### Sec. 8-43-5 Commutation of Sentence

If the Contemporary Court is satisfied that justice will be best served by reducing the sentence, the court may, in its discretion, at any time after one-half of the sentence has been served, commute to a lesser period any sentence imposed, upon proof that the person served without misconduct and/or satisfactorily performed community service.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

### Sec. 8-43-6 Restitution

A. The Contemporary Court may order a convicted defendant to pay restitution to the victims of his criminal activities to the extent that the defendant is reasonably able to do so.

B. As used in this section:

1 “victim” means any person who has suffered actual damages as a result of the defendant’s criminal activities;

2 “actual damages” means all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish and loss of consortium. Without limitation, “actual damages” includes damages for wrongful death;

3 “criminal activities” includes any crime for which there is a plea of guilty or no contest or verdict of guilty, upon which a judgment may be rendered; and

4 “restitution” means full or partial payment of actual damages to a victim.

C. An order requiring a defendant to pay restitution, validly entered pursuant to this section, constitutes a judgment and lien against all property of a defendant for the amount the defendant is obligated to pay under the order and may be recorded in any office for the filing of liens against real or personal property, or for garnishment. A judgment of restitution may be enforced by the Pueblo, a victim entitled under the order to receive restitution, a deceased victim’s estate or any other beneficiary of the judgment in the same manner as a civil judgment.

D. This section and proceedings pursuant to this section shall not limit or impair the rights of victims to recover damages from the defendant in a civil action.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-43-7 Community Service

The Contemporary Court may also require the defendant to serve a period of time in volunteer labor to be known as “community service.” The type of labor and period of service shall be at the sole discretion of the court; provided that a person receiving community service shall be immune from any civil liability other than gross negligence arising out of the community service, and a person who performs community service pursuant to court order or a criminal diversion program shall not be entitled to wages, shall not be considered an employee and shall not be entitled to workers’ compensation, unemployment benefits or any other benefits otherwise provided by law. As used in this subsection, “community service” means labor that benefits the public at large or a public, charitable or educational entity or institution.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 44 – FORFEITURE**

Sec. 8-44-1 Purpose; Applicability; No additional remedies

A. The purposes of this Article are to:

1. make uniform the standards and procedures for the seizure and forfeiture of property subject to forfeiture;

2. protect the rights of both persons under the Indian Civil Rights Act 25 USC §1301, et seq and Pueblo law whose property is subject to forfeiture and innocent owners holding interests in property subject to forfeiture;

3. deter criminal activity by reducing its economic incentives;

4. protect against the wrongful forfeiture of property; and

5. ensure that only criminal forfeiture is allowed in this Pueblo and only pursuant to Pueblo law.

B. This Article:

1. applies to all seizures, forfeitures and dispositions of property subject to forfeiture pursuant to the Criminal Code; and

2. does not apply to:

a. contraband, which is subject to seizure pursuant to applicable Pueblo and federal laws, but is not subject to forfeiture pursuant to this Article;

b. animals that are subject to seizure, impoundment, alteration, permanent removal from custody or destruction for animal welfare, public health and safety or compliance and enforcement purposes pursuant to applicable Pueblo laws; and

c. forfeiture that results from a lien for charges or assessments that are provided for or fixed by Pueblo or federal laws.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-44-2 Definitions

As used in this Article:

A. “abandoned property” means personal property the rights to which and the control of which an owner has intentionally relinquished.

B. “actual knowledge” means a direct and clear awareness of information, a fact or a condition;

C. “contraband” means goods that may not be lawfully imported, exported or possessed, including drugs that are listed in Schedule I, II, III, IV or V of the Criminal Code and that are possessed without a valid prescription;

D. “conveyance” means a device used for transportation and:

1. includes a motor vehicle, trailer, snowmobile, airplane, vessel and any equipment attached to the conveyance; but

2. does not include property that is stolen or taken in violation of a law;



E. “conviction” or “convicted” means that a person has been found guilty of a crime in the Contemporary Court whether by a plea of guilty or nolo contendere or otherwise and whether the sentence is deferred or suspended;

F. “crime” means a violation of a Pueblo Law for which property of the offender is subject to seizure and forfeiture;

G. “instrumentality” means all property that is otherwise lawful to possess that is used in the furtherance or commission of an offense to which forfeiture applies and includes a container, a conveyance, equipment, materials, a product, a computer, computer software, a telecommunications device, a firearm, ammunition, a tool, money, a security and a negotiable instrument and other devices used for exchange of property;

H. “law enforcement agency” means the Pueblo of Santa Ana Tribal Police Department;

I. “law enforcement officer” means a Pueblo of Santa Ana Tribal Police Department officer;

J. “owner” means a person who has a legal or equitable ownership interest in property;

K. “property” means tangible or intangible personal property or real property;

L. “property subject to forfeiture” means property or an instrumentality declared to be subject to forfeiture by this Article the Criminal Code, or other Pueblo law; and

M. “secured party” means a person with a security or other protected interest in property, whether the interest arose by mortgage, security agreement, lien, lease or otherwise; the purpose of which interest is to secure the payment of a debt or protect a potential debt owed to the secured party.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec 8-44-3 Forfeiture; Conviction Required; Seizure of Property; with Process; without Process

A. A person’s property is subject to forfeiture pursuant to this Article if:

1. the person was arrested for an offense to which forfeiture applies;
2. the person is convicted by the Contemporary Court of the offense; and
3. the Pueblo establishes by clear and convincing evidence that the property is subject to forfeiture as provided in Subsection B of this section.

B. Following a person’s conviction for an offense to which forfeiture applies, the Contemporary Court may order the person to forfeit:

1. property the person acquired through commission of the offense;
2. property directly traceable to property acquired through the commission of the offense; and
3. any instrumentality the person used in the commission of the offense.

C. Nothing in this section shall prevent property from being forfeited by the terms of a plea agreement to a class 1, 2, 3, or 4 offense that is approved by the court or by other agreement of the parties to a criminal proceeding.

D. Subject to the provisions of Section 8-44-4, at any time, at the request of the Pueblo, the court may issue an ex parte preliminary order to seize property that is subject to forfeiture and for which forfeiture is sought and to provide for the custody of the property. The execution on the order to seize the property and the return of the property, if applicable, are subject to this Article and other applicable Pueblo laws. Before issuing an order pursuant to this subsection, the court shall make a determination that:

1. there is a substantial probability that:
  - a. the property is subject to forfeiture;
  - b. the Pueblo will prevail on the issue of forfeiture; and
  - c. failure to enter the order will result in the property being destroyed, removed from the Pueblo or otherwise made unavailable for forfeiture; and
2. the need to preserve the availability of the property through the entry of the requested order outweighs the hardship to the owner and other parties known to be claiming interests in the property.

E. Property subject to forfeiture may be seized at any time, without a prior court order, if:

1. the seizure is incident to a lawful arrest for a crime or a search lawfully conducted pursuant to a search warrant and the law enforcement officer making the arrest or executing the search has probable cause to believe the property is subject to forfeiture and that the subject of the arrest or search warrant is an owner of the property;
2. the property subject to seizure is the subject of a previous judgment in favor of the Pueblo; or
3. the law enforcement officer making the seizure has probable cause to believe the property is subject to forfeiture and that the delay occasioned by the need to obtain a court order would result in the removal or destruction of the property or otherwise frustrate the seizure.

Sec. 8-44-3.1 Receipt for Seized Property; Replevin Hearing

A. When a law enforcement officer seizes property that is subject to forfeiture, the officer shall provide an itemized receipt to the person possessing the property or, in the absence of a person to whom the receipt could be given, shall leave the receipt in the place where the property was found, if possible.

B. Within five business days after the seizure, the law enforcement officer shall provide notice by personal service or first-class mail to all owners of record of the seized property.

C. Following the seizure of property, the defendant in the related criminal matter or another person who claims an interest in the seized property may, at any time before the one-hundred-twentieth day following the filing of the forfeiture action in court, claim an interest in the seized property by a motion requesting the court to issue a writ of replevin. A motion filed pursuant to this section shall include facts to support the person's alleged interest in the seized property.

D. A person who makes a timely motion pursuant to this section shall have a right to a hearing on the motion before the resolution of any related criminal matter or forfeiture proceeding and within sixty days of the date on which the motion is filed.

E. At least ten days before a hearing on a motion filed pursuant to this section, the Pueblo shall file an answer or responsive motion that shows probable cause for the seizure.

F. The Contemporary Court shall grant a claimant's motion if the court finds that:

1. it is likely that the final judgment will require the Pueblo to return the property to the claimant;
2. the property is not reasonably required to be held for investigatory reasons; or
3. the property is the only reasonable means for a defendant to pay for legal representation in a related criminal or forfeiture proceeding and the law enforcement agency did not make a prima facie showing that the property was stolen or proceeds from or is an instrumentality of a crime.

G. In its discretion, the Contemporary Court may order the return of funds or property sufficient for a defendant to obtain legal counsel but less than the total amount seized. If the court makes such an order, it shall require an accounting. An accounting report of reasonable legal fees held before the resolution of the relevant criminal and forfeiture proceedings shall be held in camera. If the court finds in favor of the Pueblo in both the criminal and forfeiture proceedings, the court shall:

1. hear arguments by the parties as to what portion of the funds or property should be paid to the defendant's counsel and what portion should be forfeited; and
2. issue an order on how the funds or property shall be distributed.

H. In lieu of ordering the issuance of a writ of replevin, the Contemporary Court may order:

1. the Pueblo to give security or written assurance for satisfaction of any judgment, including damages, that may be rendered in a related forfeiture action; or
2. any other relief the court deems to be just; provided that the relief does not prejudice an innocent owner, including a secured lienholder.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec 8-44-4 Notice of Intent to Forfeit; Service of Process

A. Within thirty days after making a seizure of property or simultaneously upon filing a related criminal complaint, the plaintiff shall file a notice of intent to forfeit or return the property to the person from whom it was seized. The notice shall include:

1. a description of the property seized;
2. the date and place of seizure of the property;
3. the name and address of the law enforcement agency making the seizure;
4. the specific statutory and factual grounds for the seizure;
5. whether the property was seized pursuant to an order of seizure, and if the property was seized without an order of seizure, an affidavit from a law enforcement officer stating the legal and factual grounds why an order of seizure was not required; and
6. in the notice, the names of persons known to the Pueblo who may claim an interest in the property and the basis for each person's alleged interest.

B. The notice shall be served upon the person from whom the property was seized, the person's attorney of record and all persons known or reasonably believed by the Pueblo to claim an interest in the property.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 8-44-5 Forfeiture Proceedings; Determination; Substitution of Property; Constitutionality; Appeal

A. A person who claims an interest in seized property shall file a response within thirty days after the date of service of the notice of intent to forfeit. The response shall include facts to support the claimant's alleged interest in the property.

B. The Contemporary Court has jurisdiction over forfeiture proceedings.

C. The forfeiture proceeding shall begin after the conclusion of the trial for the related criminal matter and any ancillary proceeding that relates to a defendant's property before the same judge and jury, if applicable, and the court, and the jury, if applicable, may consider the forfeiture of property seized from other persons at the same time or in a later proceeding.

D. Discovery conducted in an ancillary forfeiture proceeding is subject to the rules of criminal procedure.

E. An ancillary forfeiture proceeding that relates to the forfeiture of property valued at less than twenty thousand dollars (\$20,000) shall be held before a judge only.

F. If the Pueblo fails to prove, by clear and convincing evidence, that a person whose property is alleged to be subject to forfeiture is an owner of the property:

1. the forfeiture proceeding shall be dismissed, and the property shall be delivered to the owner, unless the owner's possession of the property is illegal; and
2. the owner shall not be subject to any charges by the Pueblo for storage of the property or expenses incurred in the preservation of the property.

G. The Contemporary Court shall enter a judgment of forfeiture and the seized property shall be forfeited to the Pueblo if the Pueblo proves by clear and convincing evidence that:

1. the seized property is subject to forfeiture;
2. the criminal prosecution of the owner of the seized property resulted in a conviction; and
3. the value of the property to be forfeited does not unreasonably exceed:
  - a. the pecuniary gain derived or sought to be derived by the crime;
  - b. the pecuniary loss caused or sought to be caused by the crime; or
  - c. the value of the convicted owner's interest in the property.

H. The Contemporary Court shall not accept a plea agreement or other arrangement by which a defendant contributes or donates property to a person, charity or other organization in full or partial fulfillment of responsibility established in the court's proceeding.

I. Following a person's conviction, the Pueblo may make a motion for forfeiture of substitute property owned by the person that is equal to but does not exceed the value of the property that is subject to forfeiture but that the Pueblo is unable to seize. The court shall order the forfeiture of substitute property only if the Pueblo proves by a preponderance of the evidence that the person intentionally transferred, sold or deposited property with a third party to avoid the court's jurisdiction and the forfeiture of the property.

J. When ownership of property is unclear, the court may order each person to forfeit the person's property on a pro rata basis or by another means the court deems equitable.

K. Within the time period for filing an appeal following the conclusion of a forfeiture proceeding, the person whose property was forfeited may petition the court to determine whether the forfeiture was unconstitutionally excessive pursuant to the Indian Civil Rights Act or Pueblo law.

L. At a non-jury hearing on the petition, the petitioner has the burden of establishing by a preponderance of the evidence that the forfeiture was grossly disproportional to the seriousness of the criminal offense for which the person was convicted.

M. In determining whether the forfeiture is excessive, the court may consider all relevant factors, including:

1. the seriousness of the criminal offense and its impact on the community, the duration of the criminal activity and the harm caused by the defendant;
2. the extent to which the defendant participated in the offense;
3. the extent to which the property was used in committing the offense;
4. the sentence imposed for the commission of the crime that relates to the property that is subject to forfeiture; and
5. whether the criminal offense was completed or attempted.

N. In determining the value of the property subject to forfeiture, the court may consider relevant factors, including the fair market value of the property and the hardship from the loss of a motor vehicle or other property to the defendant's family members or others if the property is forfeited, in addition to any non-monetary intrinsic value of property that would cause the defendant to suffer if the forfeiture is realized.

O. The court shall not consider the value of the property to the Pueblo when it determines whether the forfeiture of the property is excessive.

P. A party to a forfeiture proceeding may appeal the Contemporary Court's decision regarding the seizure, forfeiture and distribution of property.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec 8-44-6     Title to Seized Property; Disposition of Forfeited Property and Abandoned Property; Proceeds

A. The Pueblo acquires provisional title to seized property at the time the property was used or acquired in connection with an offense that subjects the property to forfeiture. Provisional title authorizes the Pueblo to hold and protect the property. Title to the property shall vest with the Pueblo when a trier of fact renders a final forfeiture verdict and the title relates back to the time when the Pueblo acquired provisional title; provided that the title is not subject to claims by third parties that are adjudicated pursuant to this Article.

B. Unless possession of the property is illegal or a different disposition is specifically provided for by law and except as provided in this section, forfeited property that is not currency shall be delivered along with any abandoned property to the tribal police for disposition at a public auction. Forfeited currency and all proceeds of the sale of forfeited or abandoned property shall be distributed as follows:

1. first, to reimburse the reasonable expenses related to the storage, protection and transfer of the property incurred by a law enforcement;
2. second, to pay any reasonable expenses incurred to dispose of the property by a law enforcement agency; and
3. third, any remaining balance shall be deposited in the Pueblo's general fund.

C. A forfeited property interest is subject to the interest of a secured party unless, in the forfeiture proceeding, the Pueblo proves by clear and convincing evidence that the secured party had actual knowledge of the crime that relates to the seizure of the property.

D. Abandoned property shall be disposed of in the same manner as provided in Subsection B of this section.

E. Property subject to forfeiture that is in a law enforcement agency's possession becomes abandoned property and may be disposed of as such without a conviction if:

1. there is no innocent owner; and
2. the criminal prosecution of the owner of the seized property cannot proceed because for a period in excess of one year and one day:

- a. a bench warrant has been pending as a result of the defendant failing to appear; or

- b. the owner fugitives.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec 8-44-6.1 Innocent Owners

A. The property of an innocent owner, as provided in this section, shall not be forfeited.

B. A person who claims to be an innocent owner has the burden of production to show that the person:

1. holds a legal right, title or interest in the property seized; and
2. held an ownership interest in the seized property at the time the illegal conduct that gave rise to the seizure of the property occurred or was a bona fide purchaser for fair value.

C. The Pueblo shall immediately return property to an established innocent owner who has an interest in a motor vehicle valued at less than ten thousand dollars (\$10,000) or a conveyance that is encumbered by a security interest that was perfected pursuant to applicable law or that is subject to a lease or rental agreement, unless the secured party or lessor had actual knowledge of the criminal act upon which the forfeiture was based.

D. If a person establishes that they are an innocent owner pursuant to Subsection B of this section and the Pueblo pursues a forfeiture proceeding with respect to that person's property, the Pueblo must prove by clear and convincing evidence that the innocent owner had actual knowledge of the underlying crime giving rise to the forfeiture.

E. A person who acquired an ownership interest in property subject to forfeiture after the commission of a crime that gave rise to the forfeiture and who claims to be an innocent

owner has the burden of production to show that the person has legal right, title or interest in the property seized under this section.

F. If a person establishes that the person is an innocent owner as provided in Subsection B of this section and the Pueblo pursues a forfeiture proceeding against the person's property, to successfully forfeit the property, the Pueblo shall prove by clear and convincing evidence that at the time the person acquired the property or an interest in the property, the person:

1. had actual knowledge that the property was subject to forfeiture; or
2. was not a bona fide purchaser who was without notice of any defect in title and who gave valuable consideration.

G. If the Pueblo fails to meet its burdens as provided in Subsections D and F of this section, the court shall find that the person is an innocent owner and shall order the Pueblo to relinquish all claims of title to the innocent owner's property without delay and the property shall be released without assessment of fees or costs.

H. Seized property that is firearms, ammunition or explosives subject to forfeiture under the protections of this section and that is not returned to an innocent owner shall be destroyed upon a motion by the law enforcement agency and an order of the Contemporary Court.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-44-7 Safekeeping of Seized Property Pending Disposition

With regard to seized property:

A. Tribal Police Department shall store all seized property and currency in accordance with the standards for the storage of evidence; and

B. unless it is returned to an owner, a law enforcement agency shall dispose of forfeited or abandoned property as provided in Section 8-44-6 of this Code.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-44-8 Reporting

Within sixty days following the conclusion of each fiscal year, every law enforcement agency shall prepare for the Tribal Council a report of the agency's seizures and forfeitures conducted pursuant to this Article for the fiscal year just ended. The report shall include:

A. the total number of seizures of currency and the total amount of currency seized in each seizure;

B. the total number of seizures of property and the number and types of items seized in each seizure;



- C. the market value of each item of property seized;
- D. the total number of occurrences of each class of crime that resulted in the agency's seizure of property; and
- E. the costs incurred by the agency for storage, maintenance and transportation of seized property.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-44-9 Return of Property; Damages; Costs

- A. A law enforcement agency that holds seized property shall return the seized property to the owner of the property within a reasonable period of time that does not exceed five days after:
  - 1. a court finds that a person had a bona fide security interest in the property;
  - 2. a court finds that the owner was an innocent owner;
  - 3. the acquittal of or dismissal of related criminal charges against the owner of the property; or
  - 4. the disposal of the criminal charge that was the basis of the forfeiture proceedings by nolle prosequi.

- B. A law enforcement agency that holds seized property is responsible for any damages, storage fees and related costs applicable to property that is returned to an owner pursuant to this section.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

#### Sec. 8-44-10 Transfer of Forfeitable Property to the Federal Government

- A. The law enforcement agency shall not directly or indirectly transfer seized property to a federal law enforcement authority or other federal agency unless:
  - 1. the value of the seized property exceeds fifty thousand dollars (\$50,000), excluding the potential value of the sale of contraband; and
  - 2. the law enforcement agency determines that the criminal conduct that gave rise to the seizure is interstate in nature and sufficiently complex to justify the transfer of the property; or
  - 3. the seized property may only be forfeited under federal law.
- B. The law enforcement agency shall not transfer property to the federal government if the transfer would circumvent the protections of this Article that would otherwise be available to a putative interest holder in the property.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 45 – VIOLATION OF PROTECTION ORDER**

### **Sec. 8-45-1    Violation of Protection Order**

A.        A restrained party convicted of violating an order of protection granted by a court is guilty of a class 5 offense. Upon a second or subsequent conviction, an offender shall be sentenced to a jail term of not less than seventy-two (72) consecutive hours that shall not be suspended, deferred or taken under advisement.

B.        In addition, the Contemporary Court shall order a person convicted under this section to make full restitution to the party injured by the violation of an order of protection and shall order the person convicted to participate in and complete a program of professional counseling, at the person's own expense, if possible.

C.        In addition to charging the person with violating an order of protection, a law enforcement officer shall file all other possible criminal charges arising from a violation of an order of protection when probable cause exists.

D.        The remedies provided in this section are in addition to any other civil or criminal remedy available to the protected party or the Pueblo.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

## **ARTICLE 46 - SEX OFFENDER REGISTRY**

### **Sec. 8-46-1    Purpose**

The purpose of the Sex Offender Registry is to protect the community of the Pueblo of Santa Ana from sex offenders by requiring sex offenders to register with the Pueblo of Santa Ana and by making certain registration information available to law enforcement agencies and the public.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011.

### **Sec. 8-46-2    Declaration of Policy**

The Pueblo of Santa Ana Tribal Council finds that:

A.        Individuals who are convicted of sex offenses have a high rate of recidivism and therefore pose a risk to the Pueblo of Santa Ana community, especially children.

B.        Requiring sex offenders to register with the Pueblo of Santa Ana and making certain information about the sex offender available to law enforcement agencies and the public is an effective way to protect the Pueblo of Santa Ana community.

C. Requiring sex offenders to register with the Pueblo of Santa Ana and making certain information about the sex offender available to law enforcement agencies and the public is not punitive or criminal punishment but rather is civil in nature.

D. Through Tribal Council Resolution No. 07-R-23 (May 31, 2007), the Pueblo of Santa Ana has asserted jurisdiction to develop and implement a sex offender registry pursuant to Title I, Sex Offender Registry and Notification Act, of the Adam Walsh Child Protection and Safety Act, P.L. 109- 248 (hereinafter “SORNA”).

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011.

### Sec. 8-46-3 Definitions

The following definitions apply only to this Article and shall not apply to any other Section of the Pueblo of Santa Ana Code unless expressly adopted by that other Section or other law of the Pueblo.

A. The term “convicted” as applied to an adult sex offender shall mean the offender has been subjected to penal consequences based on the conviction, however the conviction may be styled. A conviction that has been reversed, vacated, or set aside is not treated as a conviction for purposes of this Article. A person who has been pardoned for an offense on the ground of innocence has not been convicted of that offense. The term includes convictions of juveniles who are prosecuted as adults, and adjudications of delinquency in the circumstances described in Sec. 8-46-8(F).

B. The term “criminal offense” shall mean a tribal, local, state, federal, foreign or military offense (to the extent specified by the United States Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119), or other criminal offense.

C. The term “employee” includes an individual who is self-employed or works for any other entity, whether compensated or not, and includes volunteers.

D. The term “exclusion zone” means a place primarily intended for the use of children, including but not limited to daycare centers, schools, playgrounds, soccer fields, baseball fields, or a location where an event is offered primarily for children, such as an Easter egg hunt or Halloween party for children.

E. The term “imprisonment” shall mean incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include confinement in a state “prison” as well as a federal, military, tribal, or local “jail” or contract facility, for example. Imprisonment includes “house arrest” following a conviction.

F. The term “minor” shall mean an individual who has not attained the age of 18 years.

G. The term “a private area of another person’s body” means the naked or undergarment- clad genitals, pubic area, buttocks, or female breast of that person.

H. The term “resides” shall mean, with respect to an individual, the location of the individual’s home or other place where the individual habitually lives or sleeps. A person may reside at more than one location. A person, including hotel guests, who lives or sleeps on Pueblo of Santa Ana lands for thirty (30) days or more (consecutive or non-consecutive) during a calendar year resides on Pueblo of Santa Ana lands. A person who enters Pueblo of Santa Ana lands with the intent to reside here, or who changes his place of residence within Pueblo of Santa Ana lands, must comply with the registration requirements of this Article within the time periods allowed in Sec. 8-46-11 starting from the date of such entry onto Pueblo of Santa Ana lands or change of residence, i.e., there is no 30-day “waiting period.”

I. The term “restricted zone” means a location where children regularly are present, such as a library, a wellness center or gym, or a bus stop.

J. The term “sex offender” shall mean an individual who has been convicted of a sex offense.

K. The term “sex offender registry” shall mean the registry of sex offenders maintained by the Pueblo of Santa Ana and the notification program described in this Article.

L. The term “sex offense” shall have the meaning prescribed in Sec. 8-46-8.

M. The term “sexual act” shall mean:

1. contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;
2. contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
3. 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, or arouse or gratify the sexual desire of any person; or
4. the intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of 18 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

N. The term “sexual conduct” shall mean a sexual act or sexual contact.

O. The term “sexual contact” shall mean the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.

P. The term “SORNA” shall mean Title 1, Sex Offender Registry and Notification Act, of the Adam Walsh Child Protection and Safety Act, P.L. 109-248.

Q. The term “student” shall mean an individual who is enrolled in or attends a public or private educational institution, including a secondary school, a trade or professional school, and an institution of higher education.

R. The terms “video voyeurism” shall mean capturing the image of a private area of another person’s body, in a location where the victim has a reasonable expectation of privacy against such conduct.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011; amended by Res. No. 16-R-16, adopted April 14, 2016.

#### Sec. 8-46-4 Scope

The provisions of this Article extend to Pueblo of Santa Ana lands, which include:

A. lands held in trust by the federal government for the benefit of the Pueblo of Santa Ana;

B. lands owned by the Pueblo of Santa Ana, subject to restrictions against alienation imposed by operation of federal law; and

C. any other lands that are or may come under the jurisdiction of the Pueblo of Santa Ana.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011.

#### Sec. 8-46-5 Severability

In the event any provision of this Article, or the application of this Article to any person or circumstance, is held invalid, the remainder of this Article and the application of such provision to other persons or circumstances shall remain unaffected.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011.

#### Sec. 8-46-6 Agreements with other Governments

Nothing in this Article shall be interpreted to foreclose the ability of the Pueblo of Santa Ana to enter into agreements with other governments, including state, federal and other tribal governments, to carry out the duties under this Article and SORNA. Such agreement(s) shall be approved and any necessary amendments to this Article shall be adopted by Tribal Council through resolution prior to execution.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011; amended by Res. No. 16-R-16, adopted April 14, 2016.

#### Sec. 8-46-7 Covered Offenses - General

A. All of the criminal offenses listed in Sec. 8-46-8 are sex offenses for purposes of this Article.

B. For purposes of this Article, sex offenses also include attempts and conspiracies to commit any criminal offense listed in Sec. 8-46-8.

C. Individuals who reside on Pueblo of Santa Ana lands, are employed on Pueblo of Santa Ana lands, or who attend school on Pueblo of Santa Ana lands, and who have been convicted of any sex offense as defined by this Article, or who have been convicted of an attempt or conspiracy to commit any sex offense as defined by this Article, are subject to the requirements of this Article.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011 amended by Res. No. 16-R-16, adopted April 14, 2016.

#### Sec. 8-46-8 Criminal Offenses that are Sex Offenses

A. Santa Ana Pueblo Offenses. All sexual offenses under Santa Ana Pueblo law.

B. Federal Offenses. The following offenses under federal law:

1. 18 U.S.C. §1591 (sex trafficking of children);
2. 18 U.S.C. §1801 (video voyeurism of a minor);
3. 18 U.S.C. §2241 (aggravated sexual abuse);
4. 18 U.S.C. §2242 (sexual abuse);
5. 18 U.S.C. §2243 (sexual abuse of a minor or ward);
6. 18 U.S.C. §2244 (abusive sexual contact);
7. 18 U.S.C. §2245 (offenses resulting in death);
8. 18 U.S.C. §2251 (sexual exploitation of children);
9. 18 U.S.C. §2251A (selling or buying of children);
10. 18 U.S.C. §2252 (material involving the sexual exploitation of a minor);
11. 18 U.S.C. §2252A (material containing child pornography);
12. 18 U.S.C. §2252B (misleading domain names on the internet);
13. 18 U.S.C. §2252C (misleading words or digital images on the internet);
14. 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the United States);
15. 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity);
16. 18 U.S.C. §2422 (coercion and enticement of a minor for illegal sexual activity);
17. 18 U.S.C. §2423 (transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, engaging in illicit sexual conduct in foreign places);
18. 18 U.S.C. §2424 (failure to file factual statement about an alien individual);
19. 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct);
20. any other offense hereafter included in the definition of “sex offense” at 42 U.S.C. §1691(5).

C. Military Offenses.

1. Any military offense specified by the Secretary of Defense under §115(a)(8)(C)(i) of Public Law 105-119 as amended by §141(i) of Public Law 109-248 (codified at 10 U. S.C. §951 note): as listed in Enclosure 27 (“Listing of Offenses Requiring Sex Offender Processing”) of DoD Instruction 1325.7-P;

2. 10 U.S.C. §920 (rape, sexual assault, and other sexual misconduct).

D. Other Domestic Offenses. Any offense under the laws of a state, another Indian tribe, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the United States Virgin Islands that involves any of the following:

1. any type or degree of genital, oral, or anal penetration;
2. any sexual touching of or sexual contact with a person’s body, either directly or through the clothing;
3. kidnaping of a minor (unless committed by a parent or guardian of the minor, if the parent or guardian is not a convicted sex offender);
4. false imprisonment of a minor (unless committed by a parent or guardian of the minor, if the parent or guardian is not a convicted sex offender);
5. solicitation of a minor to engage in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct;
6. use of a minor in a sexual performance, including live performances and the production of pornography;
7. solicitation of a minor to practice prostitution;
8. video voyeurism involving a victim who is a minor;
9. possession, production, or distribution of child pornography;
10. criminal sexual conduct involving a minor, including:

a. rape, sexual assault, sexual abuse, and incest when the victim was a minor at the time of the offense,

b. offenses whose elements involve the use of other persons in prostitution (such as pandering, procuring, or pimping) when the victim was a minor at the time of the offense, and

c. the use of the internet to facilitate or attempt such conduct.

11. any conduct that by its nature is a sex offense against a minor (i.e, the status of the victim as a minor is an element of the offense); and

12. any offense similar to those outlined in:

- a. 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion);
- b. 18 U.S.C. §1801 (video voyeurism of a minor);
- c. 18 U.S.C. §2241 (aggravated sexual abuse);
- d. 18 U.S.C. §2242 (sexual abuse);
- e. 18 U.S.C. §2244 (abusive sexual contact);
- f. 18 U.S.C. §2422(b)(coercing a minor to engage in prostitution); or

g. 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).

E. Foreign Offenses. Any offense involving any conduct listed in this Section under the laws of any foreign country.

F. Aggravated Sexual Abuse by a Juvenile. Any sex offense that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. §2241(a) and (b)) and is committed by a minor who is 14 years of age or older at the time of the offense, including engaging in a sexual act with another by force or the threat of serious violence, or engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.

G. Exclusion Based on Consensual Conduct. An offense described in subsections 8-46-8(A) through 8-46-8(F) involving consensual sexual conduct is not a sex offense for purposes of this Article if the victim was competent to give consent and did consent to the conduct and:

1. the victim was an adult at the time of the offense, unless the adult victim was under the custodial authority of the offender at the time of the offense; or
2. the victim was at least thirteen (13) years old and the offender was not more than four (4) years older than the victim.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011; amended by Res. No. 16-R-16, adopted April 14, 2016.

#### Sec. 8-46-9 Tiers of Sex Offenses

The Pueblo of Santa Ana hereby categorizes sex offenses into the following: Tier 1 sex offense, Tier 2 sex offense, and Tier 3 sex offense.

A. Tier 1 Sex Offense. A sex offense that is not a Tier 2 or Tier 3 sex offense shall be considered a Tier 1 sex offense, including:

1. A sex offense for which the statutory maximum penalty is imprisonment of one year or less, including all sex offenses under Pueblo of Santa Ana law.

2. The following federal offenses for which the statutory maximum penalty is imprisonment of one year or less:

- a. 18 U.S.C. §1801 (video voyeurism of a minor);
- b. 18 U.S.C. §2252 (receipt or possession of child pornography);
- c. 18 U.S.C. §2252A (receipt or possession of child pornography);
- d. 18 U.S.C. §2252B (misleading domain names on the internet);
- e. 18 U.S.C. §2252C (misleading words or digital images on the internet);
- f. 18 U.S.C. §2422(a) (coercion to engage in prostitution);
- g. 18 U.S.C. §2423(b) (travel with the intent to engage in illicit conduct);



h. 18 U.S.C. §2423(c) (engaging in illicit conduct in foreign places);  
i. 18 U.S.C. §2424 (failure to file factual statement about an alien individual); and  
j. 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

3. A sex offense specified by the Secretary of Defense under §115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. §951 note) that is similar to those offenses outlined in Sec. 8-46-9(A)(1) and (2) and for which the statutory maximum penalty is imprisonment of one year or less.

B. Tier 2 Sex Offense. Any of the following sex offenses shall be considered a Tier 2 sex offense:

1. A sex offense other than a Tier 3 sex offense for which the statutory maximum penalty is imprisonment for more than one year.

2. A sex offense against a minor that involves:

a. the use of minors in prostitution, including solicitations;  
b. enticing a minor to engage in criminal sexual activity;  
c. a non-forcible sexual act with a minor 16 or 17 years old;  
d. sexual contact with a minor 13 years of age or older, whether directly or indirectly through the clothing, that involves the intimate parts of the body;  
e. the use of a minor in a sexual performance; or  
f. the production or distribution of child pornography.

3. The following federal offenses:

a. 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion);  
b. 18 U.S.C. §2244 (abusive sexual contact where the victim is 13 years of age or older);  
c. 18 U.S.C. §2251 (sexual exploitation of children);  
d. 18 U.S.C. §2251A (selling or buying of children);  
e. 18 U.S.C. §2252 (material involving the sexual exploitation of a minor);  
f. 18 U.S.C. §2252A (production or distribution of material containing child pornography);  
g. 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the United States);  
h. 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity);  
i. 18 U.S.C. §2422(b) (coercing a minor to engage in prostitution);  
j. 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).

4. Any military offense specified by the Secretary of Defense under §115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. §951 note) that is similar to those offenses outlined in Sec. 8-46-9(B)(1), (2), or (3).

5. Any sex offense that occurs after the offender became a Tier 1 sex offender, unless Sec. 8-46-9(C)(5) applies.

C. Tier 3 Sex Offenses. Any of the following sex offenses shall be considered a Tier 3 sex offense:

1. A sex offense for which the statutory maximum penalty is imprisonment for more than one year, if the offender has at least one prior conviction for a Tier 2 sex offense.

2. A sex offense that involves:

- a. kidnaping of a minor (unless committed by a parent or guardian of the minor, if the parent is not a convicted sex offender);
- b. a sexual act with another by force or threat;
- c. a sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate; or
- d. sexual contact with a minor under the age of 13 years, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing.

3. The following federal offenses:

- a. 18 U.S.C. §2241 (aggravated sexual abuse);
- b. 18 U.S.C. §2242 (sexual abuse);
- c. 18 U.S.C. §2244 if the victim is 12 years of age or younger (abusive sexual contact); or
- d. 18 U.S.C. §2243 (sexual abuse of a minor or ward).

4. Any military offense specified by the Secretary of Defense under §115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. §951 note) that is similar to those offenses outlined in Sec. 8-46-9(C)(1), (2), or (3).

5. Any sex offense that occurs after the offender became a Tier 2 sex offender.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011; Amended by Ordinance No. 11-O-02, adopted September 1, 2011; amended by Res. No. 16-R-16, adopted April 14, 2016.

## Sec. 8-46-10 Registry Requirements for Sex Offenders - General

A. The Pueblo of Santa Ana hereby creates a sex offender registry which shall be maintained by a Sex Offender Registrar who shall be appointed by the Governor. If the Pueblo of Santa Ana enters into an agreement pursuant to Sec. 8-46-6 of this Article to establish and maintain the sex offender registry, the Sex Offender Registrar shall be the person or official

identified in such agreement to carry out the duties of the Sex Offender Registrar under this Article.

B. A person who, on the effective date of this Article, is a sex offender and resides, is an employee, or is a student within Pueblo of Santa Ana lands shall register with the Pueblo of Santa Ana no later than thirty (30) calendar days after the effective date of this Article.

C. A person who is convicted of a sex offense by the Pueblo of Santa Ana Tribal Court after the effective date of this Article shall initially register with the Pueblo of Santa Ana as prescribed in Sec. 8-46-11, regardless of whether the sex offender resides, is an employee, or is a student within Pueblo of Santa Ana lands.

D. Every sex offender who resides, is employed, or is a student within Pueblo of Santa Ana lands other than those who come within the scope of Sec. 8-46-10(B) or Sec. 8-46-10(C), shall register with the Pueblo of Santa Ana within 3 business days of establishing a residence, commencing employment, or becoming a student on Pueblo of Santa Ana lands, or within 3 business days of the conviction requiring registration under this Article, whichever date is later.

E. Failure to comply with the registration requirements will subject an individual to the provisions of Sec. 8-46-20 and Sec. 8-46-21.

F. In order to identify and register sex offenders required to register under Sec. 8-46-10(B), the Sex Offender Registrar will endeavor to identify all persons who reside, are employed, or attend school within Pueblo of Santa Ana land on the effective date of this Article and who are on supervision for conviction of any crime. The Sex Offender Registrar shall identify any of such persons who are required to register under this Article, and shall require such registration within the following periods of time after the effective date of this Article:

1. Tier 1 Offenders: one year,
2. Tier 2 Offenders: six months,
3. Tier 3 Offenders: three months.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011; amended by Res. No. 16-R-16, adopted April 14, 2016.

#### Sec. 8-46-10A Requirements for Sex Offenders Who Are Not Required to Register

A sex offender not required to register under this Article because he or she does not reside, work, or go to school on Santa Ana lands, but who will be on Santa Ana lands for a period of more than twelve hours over two consecutive calendar days shall immediately report to the Santa Ana Police Department upon entering Santa Ana lands at the beginning of the period to advise the Police Department of the reason for and duration of his or her presence on Santa Ana lands and shall allow the Police Department to photograph him or her.

Enacted by Res. No. 16-R-16, adopted April 14, 2016.

#### Sec. 8-46-11 Initial Registration for Convictions in Pueblo of Santa Ana Court

A. The sex offender convicted by the Pueblo of Santa Ana Tribal Court shall initially register:

1. before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or
2. no later than three (3) business days after being sentenced for that offense, if the offender is not sentenced to a term of imprisonment.

B. Failure to comply with the initial registration requirements will subject an individual to the provisions of Sec. 8-46-20 and Sec. 8-46-21.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011; amended by Res. No. 16-R-16, adopted April 14, 2016.

#### Sec. 8-46-12 Keeping the Registration Current

A. All sex offenders required to register under this Article shall notify the Pueblo of Santa Ana of changes in information in the registry as follows:

1. No later than three (3) business days after each change of name, residence, employment, or school attendance, the sex offender shall appear in person before the Sex Offender Registrar and shall inform the Pueblo of Santa Ana of all such changes.
2. No later than three (3) business days after each change of any other information contained in the registry, the sex offender shall inform the Pueblo of Santa Ana of all such changes but need not appear in person.

B. Failure to keep a registration current will subject an individual to the provisions of Sec. 8-46-20 and Sec. 8-46-21.

C. The Sex Offender Registrar, no later than three (3) business days after any initial registration or any change in a sex offender's registration information, shall notify:

1. All jurisdictions where the sex offender intends to reside, work, or attend school,
2. Any jurisdiction where the sex offender is either registered or required to register,
3. If the information relates to a sex offender's intent to commence residence, school, or employment outside of the United States, any jurisdiction where the sex offender is either registered or required to register, and the U.S. Marshals Service, and
4. If the information relates to temporary lodging in another jurisdiction, the jurisdiction where the sex offender intends to be staying temporarily.

D. All sex offenders who are required to register under this Article and who reside on Pueblo of Santa Ana lands are required to inform the Sex Offender Registrar of their intent to commence residence, employment or school attendance outside the United States, and or their intent to travel outside the United States at least twenty-one (21) calendar days in advance of such travel. The Sex Offender Registrar shall provide the information on international residence, employment, school attendance, and travel to the U.S. Marshals Service, and to the national

databases, law enforcement and supervision agencies, and other jurisdictions in which the sex offender is required to register as a resident, employee or student.

E. The Sex Offender Registrar shall, with the approval of the U.S. Department of Justice SMART Office, use the SORNA Exchange Portal or other available technology to share information about sex offenders who relocate between jurisdictions or are required to register in more than one jurisdiction.

F. All sex offenders who reside on Pueblo of Santa Ana lands who are required to register under this Article are required to inform the Sex Offender Registrar of their intent to be away from their residence for seven (7) or more consecutive calendar days at least five (5) business days before commencing the temporary absence. The sex offender shall provide the information described in Sec. 8-46-13(A)(10) of this chapter.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011; amended by Res. No. 16-R-16, adopted April 14, 2016.

### Sec. 8-46-13 Information Required in Registration

A. Information Provided by the Sex Offender. The sex offender shall provide the following information to the Sex Offender Registrar for inclusion in the sex offender registry:

1. the full, primary given name of the sex offender;
2. any and all aliases, nicknames, pseudonyms or ethnic names used by the sex offender, regardless of the context in which used, and any names by which the sex offender is commonly known;
3. a valid Social Security Number for the sex offender, and any Social Security Number the sex offender has used in the past, valid or otherwise;
4. the date of birth of the sex offender, including any date(s) of birth used by the sex offender;
5. the address of each residence at which the sex offender resides or will reside, and any location or description that identifies where the sex offender habitually resides (whether a permanent residence or a location otherwise identifiable by a street or address);
6. name and address of employer for any and all places where the sex offender is employed or volunteers, including any transient or day labor employment;
7. the name and address of each school where the sex offender is a student or will be a student;
8. the license plate number, registration number or identifier, a general description (color, make, model, year), and any permanent or frequent location where the vehicle is kept for any and all vehicles owned or operated by the sex offender for work or personal use, including land vehicles, aircraft, and watercraft;
9. a photocopy of all valid driver's licenses and identification cards issued to the sex offender by any jurisdiction, including a photocopy of an identification card issued to the sex offender by the Pueblo of Santa Ana;
10. if the sex offender will be absent from his residence for 7 or more days, names and addresses of the temporary lodging locations, and the dates the sex offender will be staying at each temporary lodging location;

11. a current photograph, updated every 90 days for Tier 3 sex offenders, every 180 days for Tier 2 sex offenders, and every year for Tier 1 sex offenders;
12. any and all licensing that authorizes the sex offender to engage in an occupation or carry out a trade or business;
13. any internet identifiers, account names, and account identifiers, including but not limited to email addresses, instant message addresses and identifiers, other designations or monikers used for self-identification on internet communications or postings, and any and all designations used by the sex offender for purposes of routing or self-identification in internet communications or postings;
14. a photocopy of all passports issued by any jurisdiction and of any and all immigration documents;
15. telephone numbers of the sex offender and any other designations used by the sex offender for purposes of routing or self-identification in telephonic communications, including any text-based or voice-based communication media using fixed location phones, cellular phones, the internet, or any other communication technology or device;
16. the date of all arrests and convictions;
17. the sex offender's status of parole, probation, or supervised release;
18. the sex offender's registration status;
19. any outstanding arrest warrants;
20. a sample of the sex offender's DNA, unless it is already contained in the Combined DNA Index System (CODIS);
21. fingerprints and palm prints in a digitized format;
22. a physical description of the sex offender, including a general description of physical appearance or characteristics, any identifying marks such as scars, moles, birthmarks or tattoos.

B. Information obtained by the Pueblo of Santa Ana. The Sex Offender Registrar shall obtain the following information about the sex offender and shall ensure that the information is included in the registry for that sex offender:

1. all information the sex offender is required to provide under Sec. 8- 46-13(A);
2. the text of each provision of law defining the criminal offense(s) for which the sex offender is registered.

C. All information required in Sec. 8-46-13(A) and (B) shall be maintained in a digitized format and stored in an electronic database to enable it to be accessed by or transmitted as prescribed in Sec. 8-46-25.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011; amended by Res. No. 16-R-16, adopted April 14, 2016.

#### **Sec. 8-46-14 Duration of Registration Requirement**

A. Full Registration Period. A sex offender shall keep his or her registration under this Article current for the full registration period, excluding any time the sex offender is in custody or civilly committed, unless the sex offender is allowed a reduction under Sections 8-46-14(B) and (C). The full registration period is:

1. fifteen (15) years for Tier 1 sex offenders;
2. twenty-five (25) years for Tier 2 sex offenders;
3. the life of the sex offender for Tier 3 sex offenders.

B. Reduced Period for Clean Record. A sex offender may have his or her period of registration reduced as follows:

1. A Tier 1 sex offender may have his or her period of registration reduced to ten (10) years if he or she has maintained a clean record for ten (10) consecutive years from the date of initial registration under this Article;

2. A Tier 2 sex offender may have his or her period of registration reduced to twenty (20) years if he or she has maintained a clean record for 20 (twenty) consecutive years from the date of initial registration under this Article;

3. A Tier 3 sex offender adjudicated delinquent for the offense which required Tier 3 registration in a sex offense registry may have his or her period of registration reduced to twenty-five (25) years if he or she has maintained a clean record for twenty-five (25) consecutive years from the date of initial registration under this Article.

C. Clean Record. For purposes of Section 8-46-14(B), a sex offender maintains a clean record by:

1. not being convicted of any offense for which imprisonment for more than one year may be imposed;

2. not being convicted of any sex offense;

3. successfully completing without revocation any periods of supervised release, probation, and parole; and,

4. successfully completing an appropriate sex offender treatment program certified by the Pueblo of Santa Ana, by another jurisdiction, or by the United States Attorney General.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011; amended by Res. No. 16-R-16, adopted April 14, 2016; amended by Pueblo of Santa Ana SORNA Committee Resolution No. 2017-SC-01, adopted September 13, 2017, in accordance with authority granted by Res. No. 16-R-16.

#### **Sec. 8-46-15 Periodic In-Person Verification**

A. A sex offender shall appear in-person before the Sex Offender Registrar, shall review, update and verify the accuracy of all information in his registration, and shall allow the Sex Offender Registrar to take a current photograph:

1. once a year, if the sex offender is a Tier 1 sex offender;
2. once every six months, if the offender is a Tier 2 sex offender;
3. once every three months, if the offender is a Tier 3 sex offender.

B. If any new information or any change of information is obtained at the in-person verification, the Sex Offender Registrar shall notify all other jurisdictions in which the sex offender is required to register of the new or changed information.

**Sec. 8-46-16 Exclusion Zones and Restricted Zones**

A. This section applies to sex offenders whose sex offenses involved minor victims, for the duration of time that such offenders are required to register under this Article.

B. Exclusion Zones: Sex offenders subject to this section are prohibited from being within 100 feet of an exclusion zone located in the Tribal Administration complex, or within 300 feet of an exclusion zone located elsewhere on Santa Ana Pueblo lands

C. Restricted Zones: With regard to restricted zones, sex offenders subject to this section must comply with the following additional conditions:

1. Library: Sex offenders subject to this section are permitted to use the Library between 11:00 a.m. and 2:00 p.m., Monday through Friday, except during school holidays or when children are present.

2. Wellness Center and Gym facilities: Sex offenders subject to this section are permitted to use the Wellness Center and Gym facilities only with the approval of the Registrar, and subject to any conditions imposed by the Registrar on that use.

3. Bus Stops: Sex offenders subject to this section are prohibited from being within 100 feet of a bus stop between 6:00 a.m. and 8:30 a.m., and 2:00 p.m. and 4:30 p.m., and anytime children are present.

4. Buses: Sex offenders subject to this section are prohibited from riding in or driving a bus anytime a child is on board.

5. Department of Education Office:

a. When school is in session, sex offenders are prohibited from being inside or on the sidewalk outside the Department of Education Office between 2:00 p.m. and 6:00 p.m., Monday through Friday, or anytime that children are present.

b. When school is in not session, sex offenders are prohibited from being inside or on the sidewalk outside the Department of Education Office.

6. Other restricted zones: The Sex Offender Registrar, with the Governor's approval, may establish conditions limiting the presence of sex offenders at restricted zones that are not listed in this section. For any such condition, the Sex Offender Registrar shall provide reasonable notice to registered sex offenders subject to the limiting conditions.

**Sec. 8-46-17 Other Restrictions**

For the duration of their registration periods, all sex offenders are subject to the following conditions:

A. A sex offender is prohibited from:



1. Being in the presence of a minor without being supervised at all times by an adult who is capable of protecting the welfare and safety of the minor;
2. Working in any position where he or she would have direct contact with minors;
3. Being the watch person at Tamaya;
4. Using alcohol or illegal drugs; or
5. Having any contact with his or her victim, or from going within 100 yards of the victim, or the victim's home, school, or workplace. If at a public place, the sex offender is prohibited from being within 25 yards of the victim.

B. Sex offenders are subject to curfew and must be in their residences between the hours of 10:00 p.m. and 6:00 a.m., provided that sex offenders who are employed during those hours may travel directly to and from work, and further provided that sex offenders who are Pueblo members may stay in Tamaya during traditional activities.

C. Sex offenders are subject to random home visits by the Sex Offender Registrar or a Santa Ana Pueblo Police officer, who will be authorized to conduct "plain view" searches of all areas used by the sex offender.

D. Other conditions set by the Sex Offender Registrar, with the approval of the Governor that are narrowly tailored to address the particular risks posed by the sex offender.

Enacted by Res. No. 16-R-16, adopted April 14, 2016.

#### Sec. 8-46-18 Policies and Procedures Manual

The Sex Offender Registrar shall develop a policies and procedures manual within a reasonable period of time after this Article is enacted to assist the Pueblo of Santa Ana in the implementation of this Article. Such manual shall not be inconsistent with the provisions of this Article and shall be approved by the Governor before use. Such manual shall include any necessary forms and instructions to assist the Sex Offender Registrar in carrying out his or her duties under this Article.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011.

#### Sec. 8-46-19 Absconding Sex Offenders

A. If a sex offender fails to perform the duties imposed by this Article the Sex Offender Registrar shall attempt to determine whether the sex offender has actually absconded. If the sex offender is not located, the Sex Offender Registrar shall report the possible absconding to the appropriate law enforcement agency for investigation.

B. If the non-complying sex offender is not located, the Sex Offender Registrar shall record in the registry that the sex offender has absconded or is not locatable, shall update the National Crime Information Center and National Sex Offender Registry reflect the sex offender's status as an absconder or unlocatable, and shall refer the violation to the tribal police, tribal

prosecutor, and the United States Marshall Service for further investigation and law enforcement proceedings.

C. If the Sex Offender Registrar was notified by another jurisdiction that a sex offender intends to reside, be employed, or attend school within Pueblo of Santa Ana lands and that offender fails to appear for registration as required, the Sex Offender Registrar shall notify the jurisdiction that provided the notification that the sex offender failed to appear for registration with the Pueblo of Santa Ana.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011.

Sec. 8-46-20 Crimes and Civil Sanctions

A. Violation of this Article. Any Indian sex offender required to register pursuant to this Article who violates any provision of this Article shall be guilty of a crime and, upon conviction thereof, shall be imprisoned for a period of not more than 364 days, fined not more than \$5,000, or both imprisoned and fined.

B. Hindering Sex Offender Registration. Any Indian who:

1. Knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of this Article; or
2. Knowingly assists a sex offender in violating any provision of this Article; or
3. Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this Article; or
4. Provides information to law enforcement agency regarding a sex offender which the person knows to be false, is guilty of Hindering Sex Offender Registration, and upon conviction thereof, shall be imprisoned for a period of not more than 364 days, fined not more than \$5,000, or both imprisoned and fined.

C. Unlawful Use of Registry Information. Any Indian who uses information contained on the public website to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working or attending school at any reported addresses is guilty of Unlawful Use of Registry Information, and upon conviction thereof, shall be imprisoned for a period of not more than 180 days, fined not more than \$500, or both imprisoned and fined.

D. Civil Penalties. Any non-Indian who:

1. Is a sex offender required to register pursuant to this Article and who violates any provision of this Article; or
2. Knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of this Article; or
3. Knowingly assists a sex offender in violating any provision of this Article; or

4. Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this Article; or

5. Provides information to law enforcement agency regarding a sex offender which the person knows to be false; or

6. Uses information contained on the public website to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working or attending school at any reported addresses;

commits a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of fines, forfeitures, civil contempt, and exclusion.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011; amended by Res. No. 16-R-16, adopted April 14, 2016.

Sec. 8-46-21      Exclusion; Banishment

A. A sex offender who is found to have committed repeated, serious violations of this Article, committed a Tier 3 sex offense during his or her registration period, or committed one or more sex offenses with multiple victims, may be excluded or banished for life from Santa Ana Pueblo lands in accordance with this section. Exclusion proceedings apply to non-members; banishment proceedings apply to members.

B. An action under this section may be initiated by the Governor upon the recommendation of his staff and/or the War Chief and his staff, or by the Sex Offender Registrar with the approval of the Governor in consultation with his staff and/or the War Chief and his staff, by filing a petition in the appropriate court.

C. A petition for exclusion shall be filed in the Santa Ana Pueblo Contemporary Court; a petition for banishment shall be filed in the Santa Ana Pueblo Traditional Court. The petition shall state with specificity the grounds for exclusion or banishment and shall be personally served on the sex offender.

D. The court shall promptly schedule a hearing and provide notice of the hearing and an opportunity to be heard to the sex offender, the Sex Offender Registrar, and other interested parties.

E. The court shall conduct the hearing in accordance with its rules of civil procedure. At the conclusion of the hearing, the court shall issue a written order. The court shall deliver certified copies of the order to the Sex Offender Registrar and the Santa Ana Police Department. The Sex Offender Registrar shall update the registry to include information on any exclusion or banishment order issued by the court. The Santa Ana Police Department shall enforce any exclusion or banishment order issued by the court.

F. An order issued under this section may be appealed to the Tribal Council by filing a written notice of appeal with the Governor's Office within five (5) days after the order is issued. The notice of appeal shall state the grounds for the appeal. The Tribal Council shall

promptly schedule a hearing on the matter and shall provide notice and an opportunity to be heard to the sex offender, the Sex Offender Registrar, and other interested parties. The Tribal Council shall issue a written decision on the appeal and shall deliver certified copies of the decision to the sex offender, the Sex Offender Registrar, and the Santa Ana Police Department. The decision of the Tribal Council shall be final.

Enacted by Res. No. 16-R-16, adopted April 14, 2016.

Sec. 8-46-22      Creation of Public Sex Offender Registry Website

A.            The Pueblo of Santa Ana shall use and maintain a public sex offender registry website (hereinafter “public website”).

B.            The public website shall be overseen by the Information Technology Department of the Pueblo of Santa Ana.

C.            The Information Technology Department of the Pueblo of Santa Ana shall coordinate with the Sex Offender Registrar to develop, house and maintain any database necessary for the proper administration of the public website.

D.            If the Pueblo of Santa Ana enters into an agreement pursuant to Sec. 8-46-6 of this Article that includes the operation and maintenance of the public website, compliance with the provisions in the agreement governing the public website shall constitute compliance with this section.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011.

Sec. 8-46-23      Required and Prohibited Information

A.            Required Information. The following information shall be made available to the public on the public website:

1.    notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded;
2.    all sex offenses for which the sex offender has been convicted;
3.    the sex offense(s) for which the offender is currently registered;
4.    the address of the sex offender’s employer(s);
5.    the name of the sex offender including all aliases;
6.    a current photograph of the sex offender;
7.    a physical description of the sex offender;
8.    the residential address and, if relevant, a description of a habitual residence of the sex offender;
9.    all addresses of schools attended by the sex offender; and
10.   the sex offender’s vehicle license plate number along with a description of the vehicle.

B. Prohibited Information. The following information shall not be available to the public on the public website:

1. any arrest that did not result in conviction;
2. the sex offender's Social Security Number;
3. any travel and immigration documents;
4. the identity of the victim;
5. Internet identifiers.

C. Witness Protection. For sex offenders who are under a witness protection program, the Governor may honor the request of the United States Marshal Service or other agency responsible for witness protection by not including the original identity of the offender on the public website.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011.

Sec. 8-46-24 Other Information in the Public Website

In addition to the required information in Sec. 8-46-23(A), the public website shall contain the following:

A. Links. The public website shall include links to sex offender safety and education resources.

B. Instructions. The public website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.

C. Warnings. The public website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the public website or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.

D. Search Capabilities. The public website shall have the capability of conducting searches by name, county, city, zip code, and geographic radius.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011.

Sec. 8-46-25 Notification to Law Enforcement Agencies and the Community

A. Law Enforcement Community Notification. Whenever a sex offender registers or updates their information with the Pueblo of Santa Ana, the Sex Offender Registrar shall:

1. Within three (3) business days notify the FBI and ensure the information is updated on the National Sex Offender Registry and National Crime Information Center databases.
2. Within three (3) business days notify any agency, department, or program within the Pueblo of Santa Ana that is responsible for criminal investigation, prosecution, or sex

offender supervision functions, including but not limited to, police, whether BIA, tribal, or FBI, tribal prosecutors, and tribal probation;

3. Within three (3) business days notify the Sandoval County Sheriff and any and all other registration jurisdictions due to the sex offender's residency, school attendance, or employment; and

4. Within three (3) business days notify National Child Protection Act agencies, which includes any agency responsible for conducting employment-related background checks under Section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a).

B. **Community Notification.** The Sex Offender Registrar shall ensure there is an automated community notification process in place that ensures the following:

1. Upon a sex offender's registration or update of information with the Pueblo of Santa Ana, the public website is updated within three (3) business days; and

2. Email notice is available to the general public to notify them when a sex offender commences residence, employment, or school attendance within Pueblo of Santa Ana lands. This email notice shall include the sex offender's identity.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011.

#### Sec. 8-46-26      Background Checks

A. All businesses operating on Santa Ana lands are required to check all prospective and current employees against the National Sex Offender Registry using the National Sex Offender Public Website as provided herein.

B. Checks involving prospective employees shall be conducted prior to an offer of employment is made. Checks involving current employees shall be done at least annually.

C. Businesses shall document the checks done in accordance with this section in the employee's file and shall produce such documentation to the Sex Offender Registrar upon request.

Enacted by Res. No. 16-R-16, adopted April 14, 2016.

#### Sec. 8-46-27      Sovereign Immunity - No Waiver

Nothing in this Article shall be construed as waiving the sovereign immunity of the Pueblo of Santa Ana, its departments, agencies, employees, officials or agents.

Enacted by Ordinance Number 11-O-01, adopted April 14, 2011.