

Title 17

Law and Order

Chapter 1. Enforcement of the Criminal Code

United States Code

Indian law enforcement reform, see 25 U.S.C. § 2801 *et seq.*

Code of Federal Regulations

Indian country law enforcement, see 25 CFR § 12.1 *et seq.*

§ 101. Responsibility

The Navajo Nation assumes responsibility for the enforcement of the Criminal Code, including such amendments thereof and such additions thereto as may hereafter be enacted.

History

CN-71-77, November 10, 1977.

CJA-1-59, January 6, 1959.

§ 102. Authority to enter into cooperative agreements with federal and state agencies

The President of the Navajo Nation is authorized to enter into cooperative arrangements and agreements with federal and state law enforcement agencies with the recommendation and approval of the Public Safety Committee, the Judiciary Committee and the Intergovernmental Relations Committee for purposes of mutual assistance and definition of responsibilities.

History

CN-71-77, November 10, 1977.

CJA-1-59, January 6, 1959.

§ 103. Authority to enter into cooperative agreements for incarceration of Navajo prisoners in Navajo correctional facilities

The President of the Navajo Nation, with the advice and consent of the Judiciary, Public Safety and Intergovernmental Relations Committees of the Navajo Nation Council, is authorized to enter into agreements with federal, state, military and local authorities for the incarceration of Navajo prisoners in correctional facilities within the Navajo Nation.

History

CN-71-77, November 10, 1977.

CJA-1-59, January 6, 1959.

Chapter 2. General Provisions

Subchapter 1. General Provisions

§ 201. Title and effective date

A. This Title shall be known as the "Navajo Nation Criminal Code", and may be cited as 17 N.N.C. § 101 *et seq.*

B. The provisions of this Title shall become effective upon consideration and passage by the Navajo Nation Council and upon certification thereof. Prosecutions for offenses committed prior to the effective date shall be governed, prosecuted, and punished under the laws existing at the time such offenses were committed.

C. If any Section or application of any Section of the Navajo Nation Criminal Code is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

History

CN-71-77, November 10, 1977.

§ 202. Purpose

It is declared that the general purposes of this Code are:

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

B. To give all persons entering into the territorial jurisdiction of the Navajo Nation Courts a fair warning of proscribed conduct and of the sentences authorized upon conviction;

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

D. To protect the public interest of the Navajo Nation by defining the act or omission which constitutes each offense, and to apply the provisions of this title equally and unfavorably to all persons within the territorial jurisdiction of the Courts of the Navajo Nation.

History

CN-71-77, November 10, 1977.

Annotations

1. Construction of laws

"The statute means that the courts must construe the plain language of the statute, and resolve any doubt as to the meaning of a penal statute in favor of the defendant." *Navajo Nation v. Platero*, 6 Nav. R. 422, 429 (Nav. Sup. Ct. 1991), concurrence of Chief Justice Tso.

2. Court's authority

" ... [T]he authority of the Navajo courts to order the forfeiture of an automobile used for the illegal delivery of liquor derives from many sources. These sources are: 7 N.T.C. § 253(1) (1985 Cumm. Supp.) which gives the district courts original jurisdiction over 'all violations of laws of the Navajo Nation'; 17 N.T.C. § 202(3) and (4) (1985 Cumm. Supp.) which state the purposes of the Navajo Criminal Code; 17 N.T.C. § 203 (1985 Cumm. Supp.) which gives the Navajo Nation courts jurisdiction over any person who commits an offense within the 'Navajo Indian Country'; and 17 N.T.C. § 220(c) which gives the Navajo courts general sentencing power pursuant to its legal authority to decide criminal matters." *Begay v. Navajo Nation*, 6 Nav. R. 20, 21 (Nav. Sup. Ct. 1988).

§ 203. Territorial applicability

The Navajo Nation Courts shall have jurisdiction over any person who commits an offense by his or her own conduct if the conduct constituting any element of the offense or a result of such conduct occurs within the territorial jurisdiction of the Navajo Nation Courts as defined in 7 N.N.C. § 254, or such other dependent Indian communities as may hereafter be determined to be under the jurisdiction of the Navajo Nation and the Courts of the Navajo Nation. The Navajo Nation Courts shall also have jurisdiction over any member of the Navajo Nation who commits an offense against any other member of the Navajo Nation wherever the conduct which constitutes the offense occurs.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Annotations

1. Court's authority

" ... [T]he authority of the Navajo courts to order the forfeiture of an automobile used for the illegal delivery of liquor derives from many sources. These sources are: 7 N.T.C. § 253(1) (1985 Cumm. Supp.) which gives the district courts original jurisdiction over 'all violations of laws of the Navajo Nation'; 17 N.T.C. § 202(3) and (4) (1985 Cumm. Supp.) which state the purposes of the Navajo Criminal Code; 17 N.T.C. § 203 (1985 Cumm. Supp.) which gives the Navajo Nation courts jurisdiction over any person who commits an offense within the 'Navajo Indian Country'; and 17 N.T.C. § 220(c) which gives the Navajo courts general sentencing power pursuant to its legal authority to decide criminal matters." *Begay v. Navajo Nation*, 6 Nav. R. 20, 21 (Nav. Sup. Ct. 1988).

§ 204. Civil prosecutions of non-Indians

A. Any non-Indian alleged to have committed any offense enumerated in this Title may be civilly prosecuted by the Office of the Prosecutor. In no event shall such a civil prosecution permit incarceration of a non-Indian or permit the imposition of a criminal fine against a non-Indian.

B. Procedure. Civil prosecutions under this Section shall be conducted in accordance with the Navajo Rules of Criminal Procedure, and the non-Indian civil defendant shall be afforded all the heightened protections available to a criminal defendant under those rules including, but not limited to, the more stringent burden of proof beyond a reasonable doubt.

C. Nothing in this Section shall be deemed to preclude exercise of criminal jurisdiction over any person who, by reason of assuming tribal relations with the Navajo people or being an "in law" or hadane or relative as defined by Navajo common law, custom, or tradition, submits himself or herself to the criminal jurisdiction of the Navajo Nation.

D. Civil Penalties. Upon a finding that a non-Indian has committed any of the offenses enumerated in this Title, the Court may impose any of the following civil penalties in any combination deemed appropriate by the Court:

1. A civil fine (fines listed for offenses under Title 17 may serve as a guideline for the calculation of a civil fine, but the criminal fines are not binding upon the calculation of a civil fine);

2. Any civil forfeiture made appropriate by the penalty Sections of Title 17;

3. Restitution, or nályééh, consistent with the traditional principles of nályééh;

4. Exclusion from all lands subject to the territorial jurisdiction of the Navajo Nation courts.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Annotations

1. Children's Code

"We believe delinquency jurisdiction over non-Indians, as long as detention is not allowed, is civil in nature, and therefore within the jurisdiction of our courts. Our Children's Code, like those of states, classifies juvenile proceedings as civil." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 6 (Nav. Sup. Ct. May 26, 2005).

"We therefore hold that exclusion of a non-Indian child is not an independent proceeding, but is a possible disposition after the facts have been established in a delinquency proceeding." *In the Matter of A.P., a Minor*, No. SC-CV-02-05,

slip op. at 9 (Nav. Sup. Ct. May 26, 2005).

"We therefore hold that a non-Indian child must have a dispositional hearing before the court may exclude him or her. As no hearing was held, the family court violated A.P.'s due process rights, and we must bar it from excluding her from the Navajo Nation." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 10 (Nav. Sup. Ct. May 26, 2005).

§ 205. Time limitations

A. A prosecution for embezzlement of Navajo Nation monies or falsification of Navajo Nation records or vouchers may be commenced at any time within five years after discovery of the offense.

B. Except as otherwise provided in this Section, prosecution for other offenses must be commenced within three years from the date of the act or conduct which constitutes the offense.

C. If the offense has as a material element of fraud, forgery or an offense against the Navajo Nation government, prosecution may be commenced after discovery of the offense by an aggrieved party or by a person under a legal duty to represent an aggrieved party and who was not a party to the offense.

D. A prosecution is commenced either when a complaint is filed or when an arrest warrant or other similar process is issued.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 206. Proof

No person may be convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. The innocence of the defendant is presumed.

History

CN-71-77, November 10, 1977.

Annotations

1. Sufficiency of evidence

"We will not sustain a conviction based solely upon an extrajudicial admission. The possibility is great that an alleged admission may be fabricated to establish the defendant's guilt. We doubt that an admission, in of itself, is sufficient to satisfy the law that in every criminal case, the Navajo Nation must prove every element of the offense beyond a reasonable doubt." *Navajo Nation v. Murphy*, 6 Nav. R. 10, 15 (Nav. Sup. Ct. 1988).

2. Burden of proof

"In civil actions, the required degree of proof is generally a preponderance of evidence. The required burden of proof in criminal cases is much higher because liberty interests are at stake. In criminal cases, the prosecution must prove each element of an offense beyond a reasonable doubt." *Apachito v. Navajo Nation*, No. SC-CV-34-02, slip op. at 3 (Nav. Sup. Ct. August 13, 2003).

"Prosecution must prove each element of an offense, including intent, beyond a reasonable doubt." *Navajo Nation v. MacDonald, Jr.*, 7 Nav. R. 1, 5 (Nav. Sup. Ct. 1992).

3. Guilty plea

"The court merely stated to Morgan's co-defendant, but not to Morgan, that he could plead guilty, not guilty, or no contest, with no explanation of what these terms mean. The Court concludes this omission is inconsistent with *házhó'ógo*, as, in the absence of some explanation, a defendant may not know the meaning of these technical legal terms, and therefore his or her choice to forego trial cannot be 'knowing' and 'intelligent'." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 3-4 (Nav. Sup. Ct. November 8, 2005).

"Second, the transcript shows that the Crownpoint District Court did not accurately state the possible sentence Morgan faced." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

"Third, the Crownpoint District Court did not assure itself that the guilty plea had a factual basis by reviewing the allegations of the complaint with Morgan. Defendants have the right to know what a plea of guilty means, and therefore judges must review the complaint with the defendant and discuss the elements of the crime and the facts supporting them." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

§ 207. Double jeopardy

No person shall be put twice in jeopardy for the same crime. The defense of double jeopardy may not be waived and may be used by the accused at any stage of a criminal prosecution either before or after judgment. When a complaint charges different offenses and an appeal is granted to the defendant, he or she may not again be tried for an offense greater than the one for which he or she was originally convicted.

History

CN-71-77, November 10, 1977.

Annotations

1. Statutory construction; legislative intent

"The Court will apply heightened scrutiny to provisions that allegedly create separate offenses based on a single action, and in the absence of clear intent that the statutory offenses indeed punish separate conduct, multiple

convictions for the same action will be barred by double jeopardy. The mere fact that the elements of the two or more statutory offenses are fulfilled by a defendant's action does not, by itself, show clear intent." *Navajo Nation v. Kelly*, No. SC-CR-04-05, slip op. at 8 (Nav. Sup. Ct. July 24, 2006).

"The *Diné* concept of 'double jeopardy' also means that even if the Council creates two separate offenses that clearly punish the same conduct, it cannot nonetheless mandate multiple punishments, even if its intent is clear." *Navajo Nation v. Kelly*, No. SC-CR-04-05, slip op. at 8 (Nav. Sup. Ct. July 24, 2006).

2. Criminal complaint

"In future cases, a prosecutor must file the complaint with double jeopardy in mind, and understand that an offender cannot be convicted of both reckless driving or DUI and homicide by vehicle when such conduct causes a death. If the Prosecutor charges the defendant with reckless driving or DUI and homicide by vehicle, and establishes the elements of reckless driving or DUI, and that a death resulted from those actions, the district court may only convict the defendant for the homicide offense." *Navajo Nation v. Kelly*, No. SC-CR-04-05, slip op. at 10 (Nav. Sup. Ct. July 24, 2006).

§ 208. Witness immunity; prosecutor investigations; District Court proceedings

A. Investigation Proceedings. When a prosecutor has probable cause to believe that an offense has occurred, he or she may require any witness who he or she believes has knowledge of material information to give a sworn statement regarding such offense. If such a witness has been asked to give a sworn statement to produce a record, document or other object in connection with such investigative proceedings, the district court may, upon the written application of the prosecuting attorney, issue a written order granting use immunity and requiring the person to testify or to produce the record document or other object notwithstanding his or her privilege against self incrimination. In any application for such an order, the prosecuting attorney shall state under oath that probable cause exists and that he or she believes such order is in the public interest based on the following factors:

1. The importance of the investigation or prosecution to effective enforcement of the criminal law;
2. The value of the person's testimony or information to the investigation or prosecution;
3. The likelihood of prompt and full compliance with a compulsion order and the effectiveness of available sanctions if there is no such compliance;
4. The person's relative culpability in connection with the offense or offenses being investigated or prosecuted and their history with respect to criminal activity;
5. The possibility of successfully prosecuting prior to compelling them to testify or produce information; and

6. The likelihood of adverse collateral consequences to the person if he or she testifies or provide information under a compulsion order.

B. The District Courts of the Navajo Nation may grant the application and issue a written order if it finds:

1. The testimony or record, document or other object may be necessary to the public interest; and

2. The person has refused, or is likely to refuse, to testify or produce the record, document or other object on the basis of his or her privilege against self-incrimination.

C. Court Proceedings. If a person has been or may be called to testify or produce a record, document or other objects in an official proceeding conducted under the authority of a district court, the district court may, upon the written application of the prosecutor issue an order granting use immunity to that person and requiring the person to testify or produce the record, document or other object notwithstanding his or her privilege against self-incrimination, if it finds:

1. The testimony or the record, document or other object may be necessary to the public interest; and

2. The person has refused, or is likely to refuse, to testify or to produce the record, document or other object on the basis of his or her privilege against self-incrimination.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 209. General definitions

In this Code, unless a different meaning plainly is required:

A. "Act" or "action" means a bodily movement whether voluntary or involuntary;

B. "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;

C. "Conduct" means an action or omission and its accompanying state of mind, or, where relevant, a series of acts or omissions;

D. "Control" or "to exercise control" means to act so as to exclude others from using their property except on the defendant's own terms;

E. "Dangerous instrument" means anything that under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily

capable of causing death or serious physical injury;

F. "Deadly weapon" means anything designed for lethal use or any instrument used in a lethal manner; the term includes a firearm;

G. "Deceit" means either:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;

3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,

4. A promise made without any intention of performing it;

H. "Deface" means any unnecessary act of deforming or blighting any surface or place, whether by mechanical means such as a hatchet, knife or spray paint, or by other means, so as to detract substantially from its visual attractiveness or utility;

I. "Deprive" means to withhold the property interest of another either permanently or for so long a time period that the major portion of its economic value is lost, or to withhold it with the intent to restore it only upon payment of reward or other compensation, or to transfer or dispose of it so that it is unlikely to be recovered;

J. "Explosive" means any dynamite, nitroglycerine or other similar device or material;

K. "Facilitate" means to engage in conduct which knowingly provides another with the means or opportunity for the commission of an offense;

L. "Firearm" means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, except that it does not include an antique firearm or a firearm in permanently inoperable condition which is kept as a curio or museum piece or for educational purposes;

M. "Litter" means any rubbish, refuse, waste material, offal, paper, glass, cans, bottles, trash, debris or any foreign substance of whatever kind of description, including junked or abandoned vehicles, whether or not any of these items are of value;

N. "Material misrepresentation" means pretense, promise, representation or statement of fact which is fraudulent and which, when used or communicated, is instrumental in causing the wrongful control or transfer of property or services; the pretense may be verbal or it may be a physical act;

O. "Nályééh" means the traditional, Navajo common law process for open discussions of an offense and the Navajo values which apply to that offense,

the mediation and assignment of liability under this process, and the use of reconciliation, restorative justice and reparation in place of fines and jailing;

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

Q. "Peace officer" means any person who is a law enforcement officer vested by law with a duty to maintain public order or make arrests, whether that duty extends to all offenses or is limited to specific classes of offenses or offenders;

R. "Person", "he", "she", and "actor" includes any natural person, and where relevant, a corporation, partnership or an unincorporated association, a government or a government authority;

S. "Possess" means to have physical possession or otherwise to exercise dominion or control over property;

T. "Property" means anything of value, tangible or intangible, public or private, real or personal, including documents evidencing value or ownership;

U. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ;

V. "Services" include labor, professional service, transportation, telephone, gas or electrical services, accommodation in hotels, restaurants, leased premises or elsewhere, admission to exhibitions and use of vehicles or other movable property;

W. "Statute" or "law" includes any resolution of the Navajo Nation Council and any local law or ordinance of a political subdivision of the Navajo Nation;

X. "Tamper" means any act of interference;

Y. "Navajo Nation official" means any person who is an officer or employee of the Navajo Nation government, including a peace officer, whether elected, appointed or otherwise employed and any person participating as advisor, consultant or otherwise in performing a Navajo Nation governmental function; the term does not include jurors or witnesses;

Z. "Unlawful" means contrary to law or, where the context so requires, not permitted by law; it does not mean immoral;

AA. "Utility" means any enterprise, public or private, which provides gas, electric, steam water or communications services, as well as any common carrier on land, sea or air.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal

Code.

CN-71-77, November 10, 1977.

Annotations

1. Person, generally

17 N.N.C. § 209(R) [Previously 17 N.N.C. § 208(17), CN-71-77, amended by CJA-08-00]. "We hold, that where a criminal defendant has assumed tribal relations with the Navajo Nation, such defendant will be considered an 'Indian' and thus a 'person' for purposes of 17 N.T.C. § 208(17). In matters of public safety and responsibility for personal conduct, a defendant's personal relations within the Navajo Nation is material." *Navajo Nation v. Hunter*, 7 Nav. R. 194, 198 (Nav. Sup. Ct. 1996).

2. Person; corporation

"Assuming that a corporation is a 'person' under the unauthorized practice of law provision, see 17 N.N.C. § 209(R) (2005) (defining 'person' in the Criminal Code as including a corporation 'where relevant'), an employee may still not represent it without a license if he or she is a separate 'person' under that provision." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 10 (Nav. Sup. Ct. August 7, 2006).

"While the resulting corporation is treated as a 'person' for various purposes, the Court holds it has a separate legal existence from its officers and staff and is therefore a separate 'person' for purposes of the prohibition against the unauthorized practice of law. The choice to incorporate carries benefits but also, importantly, consequences. Among the consequences of incorporation is the inability of its agents to represent the corporate entity 'pro se'." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 11 (Nav. Sup. Ct. August 7, 2006).

§ 210. Definitions—Culpable mental states

The following definitions apply with respect to an offense set forth in this title:

A. "Intentional", "intentionally". A person's state of mind is intentional with respect to:

1. His or her conduct if it is his or her conscious objective or desire to engage in the conduct;

2. A result of his or her conduct if it is his or her conscious objective or desire to cause the result.

B. "Knowing", "knowingly". A person's state of mind is knowing with respect to:

1. His or her conduct if he or she is aware of the nature of his or her conduct;

2. An existing circumstance if he or she is aware or believes that the circumstance exists;

3. A result of his or her conduct if he or she is aware or believes that his or her conduct is substantially certain to cause the result.

C. "Reckless", "recklessly". A person's state of mind is reckless with respect to:

1. An existing circumstance if he or she is aware of a risk that the circumstance creates but disregards the risk;

2. A result of the his or her conduct if he or she is aware of a risk that the result will occur but disregards the risk. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

D. "Negligent", "negligently". A person's state of mind is negligent with respect to:

1. An existing circumstance if the person ought to be aware of a risk that the circumstance exists;

2. A result of his or her conduct if the person ought to be aware of a risk that the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

History

CN-71-77, November 10, 1977.

Subchapter 2. Liability

§ 211. Basis of criminal liability

The minimum requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform a duty imposed by law which he or she is physically capable of performing.

History

CN-71-77, November 10, 1977.

§ 212. Culpability

A person shall not be guilty of an offense unless he or she acted intentionally, knowingly, recklessly, or negligently as the law may require with respect to each material element of the offense.

History

CN-71-77, November 10, 1977.

§ 213. Ignorance or mistake

Ignorance or mistake as to a matter of fact or law is a defense if:

A. The ignorance or mistake negates the intent, knowledge, belief, recklessness, or negligence required to establish a material element of the offense; or

B. The law provides that the state of mind established by such ignorance or mistake constitutes a defense.

History

CN-71-77, November 10, 1977.

§ 214. Intoxication

A. Intoxication of the actor is not a defense unless it negatives an element of the offense.

B. When recklessness is an element of the offense, if the actor, due to self induced intoxication, is unaware of a risk of which he or she would have been aware had he or she not been intoxicated, such unawareness is immaterial.

History

CN-71-77, November 10, 1977.

§ 215. Entrapment

A. A person prosecuted for an offense shall be acquitted if he or she proves by a preponderance of evidence that his or her conduct occurred in response to an entrapment.

B. A public law enforcement official or a person acting in cooperation with such an official perpetuates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he or she induces or encourages another person to engage in conduct constituting such offense by either:

1. Making knowingly false representations designed to induce the belief that such conduct is not prohibited; or

2. Employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are previously disposed to commit it.

History

CN-71-77, November 10, 1977.

§ 216. Affirmative defenses

A. Duress. It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he or she was coerced to do so by the use of, or a threat to use, unlawful force against his or her person or the person of another, which a person of reasonable firmness in his or her situation would have been unable to resist and the actor did not recklessly or negligently place himself or herself in a situation in which it was probable he or she would be subjected to duress.

B. Justification. Conduct which the actor believes to be necessary to avoid a harm or evil to himself or herself or to another is justified and is an affirmative defense provided that the harm or evil sought to be avoided by such conduct is no greater than that sought to be prevented by the law defining the offense charged and the actor did not recklessly or negligently bring about the situation requiring his or her conduct.

C. Public duty. Conduct is justified and an affirmative defense when it is required or authorized by law.

D. Protection of self, property, or other person. The use of reasonable force upon or toward another person is justified and an affirmative defense when the actor believes that such force is immediately necessary for the purpose of protecting himself or herself or a third person against the use of unlawful force by another person or to prevent or terminate an unlawful entry or other trespass upon land or the unlawful carrying away of tangible movable property.

E. Mental disease. A person is not responsible for criminal conduct, and it is an affirmative defense, if at the time of such conduct, as a result of mental disease or defect, he or she lacks substantial capacity either to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law.

History

CN-71-77, November 10, 1977.

§ 217. Accomplice liability

A person may be charged with and convicted of an offense as an accomplice if he or she intentionally or knowingly solicits, counsels, commands, facilitates, aids, agrees to aid or attempts to aid in its commission, although he or she did not directly commit the crime and although the principal who directly committed such offense has not been prosecuted or convicted, or has been convicted of a different offense.

History

CN-71-77, November 10, 1977.

Annotations

1. Accomplice actions

"If any person within the Navajo Nation does any act to facilitate ('To make easier or less difficult') or aid ('To support, help, assist or strengthen') the delivery of any beverage which causes alcoholic intoxication, there is criminal liability. [...] It certainly includes the act of providing a place to engage in bootlegging, knowing the activity is being carried on by another." *Stanley v. Navajo Nation*, 6 Nav. R. 284, 286 (Nav. Sup. Ct. 1990).

Subchapter 3. Sentencing

§ 220. Criteria

A. No person convicted of an offense pursuant to this Title shall be sentenced otherwise than in accordance with this Subchapter. A sentence of incarceration is always considered an extraordinary measure under any offense enumerated in this Title and should be imposed only as a last alternative where a defendant is found to have caused serious injury to a victim or victims, or other serious circumstances warrant a jail sentence. All jail sentences must be supported by a written statement, by the Court, of reasons for imposition of a jail sentence.

B. The court may suspend the imposition of sentence of a person who has been convicted of a crime, may order him or her to be committed in lieu of sentence to a hospital or other institution for medical, psychiatric or other rehabilitative treatment, or may sentence him or her as follows:

1. To pay a fine;
2. To be placed on probation;
3. To imprisonment for a definite period within the term authorized;
4. To fine and probation or fine and imprisonment;
5. To community service.
6. To pay restitution or nályééh.

C. The court may, pursuant to its legal authority, decree a forfeiture of property, suspend or cancel a license, require full or partial restitution, remove a non-elected public servant or Navajo Nation government employee from office, or impose any other civil penalty, and such order or judgment may be included in the sentence.

D. Sex offender registration and reporting.

1. All Navajo Nation court sentences for convictions, guilty pleas, pleas of nolo contendere, and all conditions of probation and parole for violations of sexual offenses shall require that the offender register, and maintain registration, as a sex offender with the Navajo Nation Chief of Police.

2. All persons who have been convicted, or entered guilty pleas or

pleas of nolo contendere to crimes constituting sexual offenses, by Navajo Nation courts or the courts of another jurisdiction, and who reside, work, or attend school within the Navajo Nation shall register, and maintain registration, as a sex offender with the Navajo Nation Chief of Police. This registration shall include:

a. A copy of each judgment of the court finding the person guilty of a sexual offense; and

b. A copy of the probation or parole order relative to each sexual offense committed, including all conditions of probation or parole; and

c. The physical address of the residence of the sex offender; and

d. The physical work address of the sex offender; and

e. The physical address of the school attended by the sex offender.

f. The census number and current photograph of the sex offender.

3. All sex offenders shall maintain their registration with the Navajo Nation Chief of Police by reporting any additional or changed information set forth in Subsection (D)(1) above to the Navajo Nation Chief of Police within ten days of any change affecting such information.

4. The Navajo Nation Chief of Police shall provide written notice to:

a. All District Commanders within the Department of Law Enforcement and all Navajo Nation Chapter(s) in which the offender resides, in addition to all Navajo Nation Chapter(s) in which the offender resides, or works, or attends school; and

b. All print and broadcast media outlets which provide news coverage to all Navajo Nation Chapter(s) in which the offender resides, in addition to all Navajo Nation Chapter(s) in which the offender resides, or works, or attends school.

5. Failure by a sex offender to register, or maintain registration, as a sex offender shall be conclusive evidence of breach of conditions of probation or parole contained within any Navajo Nation court order and require that any such probation or parole be revoked. Any failure to register, or maintain registration, as a sex offender by a sex offender whose sexual offense conviction was issued by the court of another jurisdiction shall be reported, in writing, to that jurisdiction by the Navajo Nation Chief of Police.

History

CAP-20-06, April 20, 2006. The Sex Offenders Registration Act of 2005. Added

§ 220(D).

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Annotations

1. Construction and application

"For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

"District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court's discretion is necessarily limited to the specific sentence or sentencing range stated in the Code." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

" ... [T]he authority of the Navajo courts to order the forfeiture of an automobile used for the illegal delivery of liquor derives from many sources. These sources are: 7 N.T.C. § 253(1) (1985 Cumm. Supp.) which gives the district courts original jurisdiction over 'all violations of laws of the Navajo Nation'; 17 N.T.C. § 202(3) and (4) (1985 Cumm. Supp.) which state the purposes of the Navajo Criminal Code; 17 N.T.C. § 203 (1985 Cumm. Supp.) which gives the Navajo Nation courts jurisdiction over any person who commits an offense within the 'Navajo Indian Country'; and 17 N.T.C. § 220(c) which gives the Navajo courts general sentencing power pursuant to its legal authority to decide criminal matters." *Begay v. Navajo Nation*, 6 Nav. R. 20, 21 (Nav. Sup. Ct. 1988).

2. Construction with other laws

"The Tribal Council enacted 17 N.T.C. § 220(c) with knowledge of the express forfeiture penalties in other sections of the Code; thus, the Court must interpret Section 220(c) as giving the Navajo courts power to order a forfeiture of an automobile used in the illegal delivery of liquor." *Begay v. Navajo Nation*, 6 Nav. R. 20, 22 (Nav. Sup. Ct. 1988).

3. Due process

"Therefore, we hold that a civil forfeiture proceeding must provide due process as set forth in the Navajo Nation Bill of Rights, 1 N.T.C. § 3; the Indian Civil Rights Act, 25 U.S.C. § 1302(8), and Navajo common law." *Begay v. Navajo Nation*, 6 Nav. R. 20, 24 (Nav. Sup. Ct. 1988).

"We hold only that the forfeiture of an automobile demands notice and a hearing. Navajo court proceedings must comply with the Navajo Nation Bill of Rights and the Indian Civil Rights Act, and as such, we must ensure compliance with procedural and substantive due process before someone is deprived of their

private property." *Begay v. Navajo Nation*, 6 Nav. R. 20, 24 (Nav. Sup. Ct. 1988).

4. Review

"We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

5. Guilty plea

"The court merely stated to Morgan's co-defendant, but not to Morgan, that he could plead guilty, not guilty, or no contest, with no explanation of what these terms mean. The Court concludes this omission is inconsistent with *házhó'ógo*, as, in the absence of some explanation, a defendant may not know the meaning of these technical legal terms, and therefore his or her choice to forego trial cannot be 'knowing' and 'intelligent'." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 3-4 (Nav. Sup. Ct. November 8, 2005).

"Second, the transcript shows that the Crownpoint District Court did not accurately state the possible sentence Morgan faced." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

"Third, the Crownpoint District Court did not assure itself that the guilty plea had a factual basis by reviewing the allegations of the complaint with Morgan. Defendants have the right to know what a plea of guilty means, and therefore judges must review the complaint with the defendant and discuss the elements of the crime and the facts supporting them." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

§ 221. Sentencing considerations

A. Before imposing sentence the court shall take into consideration the offender's prior record, family circumstances, employment status, and any other circumstances which will aid in imposing a just and fair sentence.

B. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or *nályééh* shall be paid to the victim(s) or the Navajo Nation.

C. The trial court may utilize the services of the Navajo Peacemaker Court to determine *nályééh* and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

D. The trial court may consider the imposition of peace or security bond upon the defendant, including the pledges of family or clan sureties.

E. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

F. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

G. The courts of the Navajo Nation shall establish a fund, to be collected from assessments against persons convicted of any offense under this Title and under Title 14 in addition to any fine to cover the cost of liability insurance for the community service program.

H. Notwithstanding any other provision of this Section or Section 220, the trial court may impose any reasonable condition of sentence which strives to rehabilitate the defendant or serves the reasonable needs of the victims of crime and of society and is not inconsistent with the sentencing terms established for the offense or offenses which the defendant is determined to have committed.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Annotations

1. Construction and application

"For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

"District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court's discretion is necessarily limited to the specific sentence or sentencing range stated in the Code." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

2. Review

"We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

3. Guilty plea

"The court merely stated to Morgan's co-defendant, but not to Morgan, that he could plead guilty, not guilty, or no contest, with no explanation of what these terms mean. The Court concludes this omission is inconsistent with *házhó'ógo*, as, in the absence of some explanation, a defendant may not know the

meaning of these technical legal terms, and therefore his or her choice to forego trial cannot be 'knowing' and 'intelligent'." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 3-4 (Nav. Sup. Ct. November 8, 2005).

"Second, the transcript shows that the Crownpoint District Court did not accurately state the possible sentence Morgan faced." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

"Third, the Crownpoint District Court did not assure itself that the guilty plea had a factual basis by reviewing the allegations of the complaint with Morgan. Defendants have the right to know what a plea of guilty means, and therefore judges must review the complaint with the defendant and discuss the elements of the crime and the facts supporting them." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

§ 222. Fines

A. A person who has been convicted of an offense may be sentenced to pay a fine as designated for that offense.

B. Whether to impose a fine in a particular case, up to the authorized maximum and the method of payment, shall remain within the sound discretion of the court.

C. The court shall be explicitly authorized to permit installment payments of any imposed fine on conditions tailored to the means of the particular offender.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

United States Code

Indian Civil Rights Act, see 25 U.S.C. § 1302.

Annotations

1. Construction and application

"For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

"District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court's discretion is necessarily limited to the specific sentence or sentencing range stated in the Code." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

2. Review

"We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

3. Guilty plea

"The court merely stated to Morgan's co-defendant, but not to Morgan, that he could plead guilty, not guilty, or no contest, with no explanation of what these terms mean. The Court concludes this omission is inconsistent with *házhó'ógo*, as, in the absence of some explanation, a defendant may not know the meaning of these technical legal terms, and therefore his or her choice to forego trial cannot be 'knowing' and 'intelligent'." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 3-4 (Nav. Sup. Ct. November 8, 2005).

"Second, the transcript shows that the Crownpoint District Court did not accurately state the possible sentence Morgan faced." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

"Third, the Crownpoint District Court did not assure itself that the guilty plea had a factual basis by reviewing the allegations of the complaint with Morgan. Defendants have the right to know what a plea of guilty means, and therefore judges must review the complaint with the defendant and discuss the elements of the crime and the facts supporting them." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

§ 223. Imprisonment

A person who has been convicted may be sentenced for a definite term not greater than one year (365 days) per offense.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

United States Code

Indian Civil Rights Act, see 25 U.S.C. § 1302.

Annotations

1. Construction and application

"For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

"District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court's discretion is necessarily limited to the specific sentence or sentencing range stated in the Code." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

"According to Subchapter 2, every jail sentence imposed must be both definite and limited to one (1) year or less jail time. Any sentence beyond that provision is unlawful and violates the Navajo Nation Bill of Rights." *Martin v. Antone*, No. SC-CV-48-02, slip op. at 2-3 (Nav. Sup. Ct. August 13, 2003).

2. Violations

"This Court holds that the jail sentence imposed does not have a definite term. The Petitioner was jailed for 55 days although he kept informing the District Court that he does not have the money, nor can he raise the money if he is incarcerated. Under these circumstances, the sentence is contrary to 17 N.N.C. § 223, constituting cruel and unusual punishment." *Cody v. Greyeyes*, No. SC-CV-09-09, slip op. at 4 (Nav. Sup. Ct. March 11, 2009).

"We therefore hold that the Navajo Nation Bill of Rights prohibited Petitioner's incarceration for his inability to pay the court imposed fines and fees in a criminal proceeding; under these circumstances, the sentence constitutes cruel and unusual punishment and an unreasonable deprivation of liberty." *Cody v. Greyeyes*, No. SC-CV-09-09, slip op. at 5 (Nav. Sup. Ct. March 11, 2009).

"The sentence violates 17 N.N.C. § 223 (2000) in two ways. First, it does not have a definite term. A 'definite' jail sentence must provide a specific number of days or months. Second, Petitioner's sentence violates the one (1) year limit on jail sentences because the Petitioner could be and was held for over a year. We hold that to detain a convicted defendant indefinitely not only violates the sentencing provisions of Title 17 but is also prohibited by the Navajo Nation Bill of Rights as cruel and unusual punishment." *Martin v. Antone*, No. SC-CV-48-02, slip op. at 2-3 (Nav. Sup. Ct. August 13, 2003).

3. Review

"We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

4. Guilty plea

"The court merely stated to Morgan's co-defendant, but not to Morgan, that he could plead guilty, not guilty, or no contest, with no explanation of what these terms mean. The Court concludes this omission is inconsistent with *házhó'ógo*, as, in the absence of some explanation, a defendant may not know the meaning of these technical legal terms, and therefore his or her choice to forego trial cannot be 'knowing' and 'intelligent'." *Navajo Nation v. Morgan*,

No. SC-CR-02-05, slip op. at 3-4 (Nav. Sup. Ct. November 8, 2005).

"Second, the transcript shows that the Crownpoint District Court did not accurately state the possible sentence Morgan faced." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

"Third, the Crownpoint District Court did not assure itself that the guilty plea had a factual basis by reviewing the allegations of the complaint with Morgan. Defendants have the right to know what a plea of guilty means, and therefore judges must review the complaint with the defendant and discuss the elements of the crime and the facts supporting them." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

§ 224. Probation

The court shall have the discretion in any case except where prohibited by statute to suspend all or part of an offender's sentence and release the defendant on probation. The offender shall sign a probationary pledge, the conditions and limitations of which shall be set forth by the court.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

United States Code

Indian Civil Rights Act, see 25 U.S.C. § 1302.

Annotations

1. Construction and application

"For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

"District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court's discretion is necessarily limited to the specific sentence or sentencing range stated in the Code." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

"17 N.T.C. § 224 gives the courts discretion to suspend a sentence and release the defendant on probation, but it does not allow an original sentence of probation. It is essential that a lawful and clearly-defined sentence be imposed on a defendant in the defendant's presence in open court." *Johnson v. The Navajo Nation*, 5 Nav. R. 152, 153 (Nav. Sup. Ct. 1987).

2. Review

"We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

3. Guilty plea

"The court merely stated to Morgan's co-defendant, but not to Morgan, that he could plead guilty, not guilty, or no contest, with no explanation of what these terms mean. The Court concludes this omission is inconsistent with *házhó'ógo*, as, in the absence of some explanation, a defendant may not know the meaning of these technical legal terms, and therefore his or her choice to forego trial cannot be 'knowing' and 'intelligent'." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 3-4 (Nav. Sup. Ct. November 8, 2005).

"Second, the transcript shows that the Crownpoint District Court did not accurately state the possible sentence Morgan faced." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

"Third, the Crownpoint District Court did not assure itself that the guilty plea had a factual basis by reviewing the allegations of the complaint with Morgan. Defendants have the right to know what a plea of guilty means, and therefore judges must review the complaint with the defendant and discuss the elements of the crime and the facts supporting them." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

§ 225. Multiple sentences

When multiple sentences of imprisonment are imposed on a defendant for more than one crime, such multiple sentences shall run concurrently or consecutively as the court determines at the time of the sentence.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Annotations

1. Construction and application

"For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

"District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court's discretion is necessarily limited to the specific sentence or sentencing range

stated in the Code." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

"The words of the statute clearly show that the Council intended to give courts discretionary authority to impose either a concurrent or a consecutive sentence for different offenses." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 447 (Nav. Sup. Ct. 1991).

2. Review

"We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

§ 226. De Minimis Infractions

A. The court shall dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the defendant's conduct:

1. Was within a customary license or tolerance, neither expressly negated by the persons whose interest was infringed nor inconsistent with the purpose of the law defining the offense; or

2. Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or

3. Presents such other extenuation that it cannot reasonably be regarded as envisaged by the legislature in forbidding the offense.

B. The court shall not dismiss a prosecution under this Section without filing a written statement of its reasons.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Annotations

1. Construction and application

"For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

"District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court's discretion is necessarily limited to the specific sentence or sentencing range

stated in the Code." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

"The words of the statute clearly show that the Council intended to give courts discretionary authority to impose either a concurrent or a consecutive sentence for different offenses." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 447 (Nav. Sup. Ct. 1991).

2. Review

"We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

Chapter 3. Offenses

Subchapter 1. Inchoate Offenses

§ 301. Solicitation

A. Offense. A person commits solicitation if, with intent that another person engage in conduct constituting an offense, he or she commands, entreats, induces, or otherwise endeavors to persuade such person to engage in such conduct.

B. Affirmative defense. It is an affirmative defense to a prosecution under this Section that, under circumstances manifesting a complete and voluntary renunciation of his or her criminal intent, the defendant made a reasonable effort to prevent the conduct or result which is the object of the solicitation.

C. Defense precluded. It is not a defense to a prosecution under this Section that the person solicited could not be convicted of the offense because he or she lacked the state of mind required for the commission of the offense, because the person solicited was incompetent or irresponsible, or because he or she was otherwise not subject to prosecution.

D. Sentence.

1. Any person found guilty of solicitation of any offense under Subchapter 2 of Chapter 3 of this Title may be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both, but in no case shall the penalty imposed be greater than the penalty imposed for the crime which was the object of solicitation.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo

Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 302. Conspiracy

A. Offense. A person commits conspiracy if, with the intent to promote or facilitate the commission of an offense, he or she agrees with one or more persons that at least one of them will engage in conduct constituting the offense, and one of the parties commits an overt act in furtherance of the agreement.

B. Affirmative defense. It is an affirmative defense to a prosecution under this Section that the defendant, under circumstances manifesting a complete and voluntary renunciation of his or her criminal intent, gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which was the objective of the conspiracy.

C. Defense precluded. It is not a defense to prosecution under this Section that one or more of the persons with whom the defendant is alleged to have conspired has not been prosecuted or convicted, has been convicted of a different offense, or is immune from or otherwise not subject to prosecution.

D. Duration of conspiracy. Conspiracy is a continuing course of conduct which ends when the offense or offenses which are its object have been committed or when the agreement that they be committed is abandoned by the defendant.

E. Abandonment of conspiracy. A defendant may abandon a conspiratorial agreement and terminate his or her relationship with the conspiracy only if he or she clearly ceases to agree that the conspiratorial objective be committed, takes no further part in the conspiracy, and communicates his or her desire to abandon the conspiracy to other members of the conspiracy.

F. Sentence.

1. Any person found guilty of conspiracy to commit an offense under Subchapter 2 or Subchapter 7 of Chapter 3 of this Title may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both, but in no case shall the penalty imposed be greater than the penalty imposed for the crime which was the object of the conspiracy.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Annotations

1. Evidence

"Circumstantial evidence may be used to prove conspiracy." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 443 (Nav. Sup. Ct. 1991).

Subchapter 2. Offenses Against Persons

§ 303. Criminal homicide

A. A person commits criminal homicide if he or she intentionally, knowingly, recklessly, or with criminal negligence, causes the death of another human being, including an unborn child. There shall be no cause of action for criminal homicide against a mother or a physician for the death of an unborn

child caused by an abortion where the abortion was permitted by law and any required consent was lawfully given.

B. Sentence. Any person found guilty of criminal homicide may be sentenced to imprisonment for a term not to exceed 365 days, or ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both. This sentence shall apply to any conviction for vehicular homicide under 14 N.N.C. § 703.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

§ 304. Kidnapping

A. A person commits kidnapping when he or she intentionally or knowingly and without authority of law and against the will of the victim:

1. Detains or restrains another for any substantial period; or
2. Detains or restrains another in circumstances exposing him or her to risk of serious bodily injury; or
3. Holds another in involuntary servitude; or
4. Detains or restrains a minor without consent of his or her parent or guardian.

B. Sentence. Any person found guilty of kidnapping may be sentenced to imprisonment for a term not to exceed 365 days, or ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

§ 305. Aggravated Kidnapping

A. A person commits aggravated kidnapping if the person intentionally or knowingly, without authority of law and against the will of the victim, by any means and any manner, seizes, confines, detains, or transports the victim with intent:

1. To hold for ransom or reward, or as a shield or hostage, or to compel a third person to engage in particular conduct or to forbear from engaging in particular conduct; or
2. To facilitate the commission, attempted commission, or flight after commission or attempted commission of an offense; or
3. To inflict bodily injury on or to terrorize the victim or another; or

4. To interfere with the performance of any governmental or political function; or

5. To commit a sexual offense as described in Subchapter 15 of Chapter 3 of this Title.

B. A detention or moving is deemed to be result of force, threat, or deceit if the victim is mentally incompetent or younger than 16 years and the detention or moving is accomplished without the effective consent of the victim's custodial parent, guardian, or person acting in loco parentis to the victim.

C. Sentence. Any person found guilty of aggravated kidnapping may be sentenced to imprisonment for a term not exceed 365 days, or ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

§ 306. Child kidnapping

A. A person commits child kidnapping when the person intentionally or knowingly, without authority of law and against the will of the victim, by any means and in any manner, seizes, confines, detains, or transports a child under the age of 14 with the intent to keep or conceal the child from his or her parent, guardian, or other person having lawful custody or control of the child.

B. A seizure, confinement, detention, or transportation is deemed to be against the will of the victim if the victim is younger than 14 years of age at the time of the offense, and the seizure, confinement, detention, or transportation, is without the effective consent of the victim's custodial parent, guardian, or person acting in loco parentis.

C. Sentence. Any person found guilty of child kidnapping may be sentenced to imprisonment for a term not to exceed 365 days, or ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

§ 307. Arson

A. A person is guilty of arson if under circumstances not amounting to aggravated arson, he or she, by means of fire or explosives, unlawfully and intentionally damages:

1. Any property with intention of defrauding an insurer; or
2. The property of another.

B. Sentence. Any person found guilty of arson may be sentenced to imprisonment for a term not to exceed 180 days, or ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

§ 308. Aggravated arson

A. A person is guilty of aggravated arson if by means of fire or explosives he or she intentionally and unlawfully damages:

1. A habitable structure; or

2. Any structure or vehicle when any person not a participant in the offense is in the structure or vehicle.

B. Sentence. Any person found guilty of aggravated arson may be sentenced to imprisonment for a term not to exceed 365 days, or ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

§ 309. Reckless burning

A. A person is guilty of reckless burning if he or she:

1. Recklessly starts a fire or causes an explosion which endangers human life; or

2. Having started a fire, whether recklessly or not, and knowing that it is spreading and will endanger the life or property of another, either fails to take reasonable measures to put out or control the fire or fails to give a prompt fire alarm; or

3. Damages the property of another by reckless use of fire or causing an explosion.

B. Sentence.

1. Any person found guilty of reckless burning may be sentenced to imprisonment for a term not to exceed 90 days, or ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

§ 310. Threatening

A. Offense. A person commits threatening if he or she threatens by word or conduct to cause physical injury to the person of another or causes serious damage to the property of another:

1. With the intent to terrorize, or in reckless disregard of the risk of terrorizing, another person; or

2. With intent to cause, or in reckless disregard of the risk of causing, serious public inconvenience, including but not limited to evacuation of a public building or transportation facility.

B. Sentence.

1. Any person found guilty of threatening may be sentenced to imprisonment for a term not to exceed 90 days, or be ordered to pay a fine not to exceed two hundred fifty dollars (\$250.00), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 311. Unlawful imprisonment

A. Offense. A person commits unlawful imprisonment if without lawful authority he or she intentionally removes, detains, restrains, or confines the person of another without his or her consent.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 312. Interference with custody

A. Offense. A person commits interference with custody if he or she intentionally or knowingly takes or entices any child under the age of from the custody of its parent, guardian or other lawful custodian, or any legally committed person from lawful custody, when he or she has no privilege to do so.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CO-74-78, October 5, 1978.

CN-71-77, November 10, 1977.

§ 313. Contributing to the delinquency of a minor

A. Offense. A person commits contributing to the delinquency of a minor if he or she knowingly assists, aids, encourages or advises a minor to commit an offense as defined by the laws of the Navajo Nation, or federal or state law.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo

Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 314. Assault

A. Offense. A person commits assault if he or she:

1. Attempts to commit a battery upon the person of another; or

2. By any unlawful act, threat or menacing conduct causes an other person to reasonably believe that he or she is in danger of receiving an immediate battery.

B. Sentence. Any person found guilty of assault may be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 315. Aggravated assault

A. Offense. A person commits aggravated assault if he or she:

1. Unlawfully assaults or strikes at another with a deadly weapon;
or

2. Commits assault by threatening or menacing another while wearing a mask, hood, robe or other covering upon the face or head, or while

disguised in any manner, so as to conceal identity.

B. Sentence. Any person found guilty of aggravated assault may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CO-74-78, October 5, 1978.

CN-71-77, November 10, 1977.

§ 316. Battery

A. Offense. A person commits battery if he or she unlawfully and intentionally strikes or applies force to the person of another.

B. Sentence. Any person found guilty of battery may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 317. Aggravated battery

A. Offense. A person commits aggravated battery if he or she:

1. Unlawfully applies force to the person of another, or strikes the person with a deadly weapon; or

2. Intentionally or knowingly causes serious physical injury to the person of another.

B. Sentence. Any person found guilty of aggravated battery may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Annotations

1. Burden of proof

"The Navajo Nation has the duty to show, by proof beyond a reasonable doubt, that the defendant unlawfully applied force to the person of Wilson Murphy, or that the defendant intentionally or knowingly caused serious physical injury to the person of Wilson Murphy." *Navajo Nation v. Murphy*, 6 Nav. R. 10, 15 (Nav. Sup. Ct. 1988).

2. Guilty plea

"The court merely stated to Morgan's co-defendant, but not to Morgan, that he could plead guilty, not guilty, or no contest, with no explanation of what these terms mean. The Court concludes this omission is inconsistent with *házhó'ógo*, as, in the absence of some explanation, a defendant may not know the meaning of these technical legal terms, and therefore his or her choice to forego trial cannot be 'knowing' and 'intelligent'." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 3-4 (Nav. Sup. Ct. November 8, 2005).

"Second, the transcript shows that the Crownpoint District Court did not accurately state the possible sentence Morgan faced." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

"Third, the Crownpoint District Court did not assure itself that the guilty plea had a factual basis by reviewing the allegations of the complaint with Morgan. Defendants have the right to know what a plea of guilty means, and therefore judges must review the complaint with the defendant and discuss the elements of the crime and the facts supporting them." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

Subchapter 3. Weapons and Explosives

§ 320. Unlawful carrying of a deadly weapon

A. Offense. A person commits unlawful carrying of a deadly weapon if he or she carries a loaded firearm or any other type of deadly weapon.

B. Exceptions. Subsection (A) of this Section shall not apply to any of the following:

1. To peace officers in the lawful discharge of their duties;
2. To persons in a private motor vehicle or other means of conveyance, for lawful protection of the person's or another's person or property, while traveling and such weapon is located in a closed trunk, luggage, or glove compartment of a motor vehicle;
3. To a person in his or her residence, or on real property belonging to such person as owner, lessee, tenant, or licensee;
4. To a person or persons carrying or discharging a firearm as an integral part of any traditional Navajo religious practice, ceremony, or service;

5. To persons engaged in the hunting of game or predatory animals.

C. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CAP-9-79, April 18, 1979.

CO-74-78, October 5, 1978.

CN-71-77, November 10, 1977.

§ 321. Unlawful use of a weapon

A. Offense. A person commits unlawful use of a weapon if he or she:

1. Without lawful authority discharges a firearm in the proximity of a building, or into any building or vehicle so as to knowingly endanger a person or property;

2. Carries a firearm while under the influence of an intoxicant or narcotic; or

3. Handles or uses a firearm or other deadly weapon so as to knowingly or recklessly endanger the safety of another or that person's property.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 322. Unlawful sale, possession or transportation of explosives

A. Offense. A person commits unlawful sale, possession or transportation of explosives if he or she:

1. Knowingly sells or possesses any explosive, or causes 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;

2. Knowingly makes, buys, transports, or transfers any explosive either with intent to use such explosive to commit a crime or knowing that another intends to use it to commit a crime.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 323. Dangerous use of explosives

A. Offense. A person commits dangerous use of explosives if he or she maliciously explodes, attempts to explode or places any explosive with the intent to injure, intimidate or terrify another, or to damage another's property.

B. Sentence.

1. Any person found guilty of dangerous use of explosives may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department

of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 324. Negligent use of explosives

A. Offense. A person commits negligent use of explosives if he or she negligently explodes, attempts to explode or places any explosive in such a manner as to result in injury to another or to the property of another, or by such action increases the probability of such injury.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 325. Forfeiture of weapons and explosives

Upon the conviction of any person for the violation of any law of the Navajo Nation in which a deadly weapon, dangerous instrument or explosive was used, displayed or unlawfully possessed by such person, the court shall order the article forfeited to the Navajo Nation and destroyed.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Subchapter 4. Theft and Related Offenses

§ 330. Theft

A. Offense. A person commits theft if, without lawful authority, he or she intentionally or knowingly:

1. Controls property of another with the intent to deprive him or her of such property permanently;

2. Converts to an unauthorized use services or property of another entrusted to the defendant for a limited, authorized use;

3. Obtains property of another by means of any material misrepresentation with intent to deprive him or her thereof;

4. Comes into control of lost, mislaid or misdelivered property of another under circumstances providing means of inquiry as to the true owner and appropriates such property to his or her own or another's use without reasonable efforts to notify the true owner.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 331. Theft of services

A. Offense. A person commits an offense pursuant to this section if, without lawful authority, he or she obtains services which such person knows are available only for compensation with the intent of avoiding payment for such services.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 332. Unauthorized use of automobiles or other vehicles

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly operates another's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle, without the consent of the owner. The repossession of any such vehicle in violation of the provisions of 7 N.N.C. § 607 *et seq.* shall constitute a violation of this Section.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 333. Receiving stolen property

A. Offense. A person commits an offense pursuant to this Section if he or she purchases, receives, conceals, or aids in the concealing of any property of another knowing or having reason to know that such property was obtained by theft, extortion, fraud, or other means declared to be unlawful under the provisions of this title.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district

Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 334. Shoplifting

A. Offense. A person commits shoplifting if he or she obtains the goods of another while in a mercantile establishment in which merchandise is displayed for sale by:

1. Willfully taking possession of any merchandise with the intention of converting it without paying for it;

2. Willfully concealing any merchandise with the intention of converting it without paying for it;

3. Willfully altering any label, price, tag or marking any merchandise with the intention of depriving the merchant of all or some part of the value of it;

4. Willfully transferring any merchandise from the container in or on which it is displayed to any other container with the intention of depriving the merchant of all or some part of the value of it.

B. Detention to effect recovery. A merchant, or his or her agent or employee, upon probable cause, may detain on the premises in a reasonable manner and for a reasonable time any person suspected of shoplifting as defined in Subsection (A) of this Section for questioning or summoning a law enforcement officer. In no event shall such detention exceed one (1) hour. Such detention shall not subject the merchant or his or her agent or employee to criminal or civil liability.

C. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 335. Fraud

A. Offense. A person commits fraud if he or she unlawfully obtains the property of another by willful misrepresentation, deceit, false interpreting, or the use of false weights and measures, with the intent of depriving such other person of the property.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal

Code.

CN-71-77, November 10, 1977.

§ 336. Theft by extortion

A. Offense. A person commits theft by extortion if he or she intentionally or knowingly obtains or seeks to obtain property by means of a threat to do in the future any of the following:

1. Cause physical injury to any other person; or
2. Cause damage to property, or
3. Accuse anyone of a crime or bring criminal charges against anyone; or
4. Expose a secret or an asserted fact, whether true or false, tending to subject anyone to hatred, contempt or ridicule, or to impair his or her credit or business; or
5. Take or withhold action as public servant or cause a public servant to take or withhold action.

B. Sentence.

1. Any person found guilty of theft by extortion pursuant to Sections 336(A)(1) or (5) may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Subchapter 5. Forgery and Related Offenses

§ 340. Forgery

A. Offense. A person commits forgery if, with intent to defraud, he or she:

1. Falsely makes, completes or alters a written instrument; or
2. Offers or presents, whether accepted or not, a forged instrument.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 341. Criminal simulation

A. Offense. A person commits criminal simulation if, with intent to defraud, he or she makes, alters, or presents or offers, whether accepted or

not, any object so that it appears to have an antiquity, rarity, source, authorship or value that it does not in fact possess.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 342. Obtaining a signature by deception

A. Offense. A person commits obtaining a signature by deception if, with intent to defraud, he or she obtains the signature of another person to a written instrument by knowingly misrepresenting or omitting any fact material to the instrument or transaction.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan

sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 343. Criminal impersonation

A. Offense. A person commits criminal impersonation if he or she:

1. Assumes a false identity with the intent to defraud another; or
2. Pretends to be a representative of some person or organization with the intent to defraud.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal

Code.

CN-71-77, November 10, 1977.

Subchapter 6. Trespass and Burglary

§ 350. Criminal trespass

A. Offense. A person commits criminal trespass if he or she intentionally and knowingly, and without consent or permission of the owner, user, or person in lawful possession thereof enters upon, remains or traverses upon private, allocated or allotted lands or other property not his or her own.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 351. Criminal entry

A. Offense. A person commits criminal entry if he or she intentionally and knowingly, and without consent or permission of the owner, user, or person in lawful possession thereof:

1. Enters upon any lands or buildings whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with or obstructing any lawful business or occupation therein;

2. Refuses or fails to leave land, real property or structures of any kind belonging to or lawfully occupied by another, and not open to the general public, upon being requested to leave by a police officer, or the owner, user, or the person in lawful possession thereof;

3. Refuses or fails to leave a public building or a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a police officer, a regularly employed guard, watchman or custodian of the public agency owning or maintaining the building or property.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 352. Trespass with force or violence

A. Offense. A person commits trespass with force or violence if he or she uses force or violence in entering upon or detaining lands, real property or structures of any kind belonging to, or lawfully occupied by another, except in cases and the manner allowed by law.

B. Sentence.

1. Any person found guilty of trespass with force or violence may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000) or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 353. Burglary

A. Offense. A person commits burglary if he or she enters or remains unlawfully in a residential or non-residential structure, or motor vehicle, with the intent of committing an offense therein.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or

security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Subchapter 7. Bribery and Related Offenses

§ 360. Bribery in official and political matters

A. Offense. A person commits an offense pursuant to this Section if:

1. He or she offers, confers, or agrees to confer any benefit upon a Navajo Nation official, Navajo Nation judge or employee with the intention of influencing such person's vote, opinion, judgment, exercise of discretion or other action in his or her capacity as a Navajo Nation official, Navajo Nation judge or employee.

2. While a Navajo Nation official, Navajo Nation judge or employee, he or she solicits, accepts or agrees to accept any benefit upon an agreement or understanding that his or her vote, opinion, judgment, exercise of discretion or other action as a Navajo Nation official, Navajo Nation judge or employee may thereby be influenced.

B. Sentence.

1. Any person found guilty of bribery in official and political matters may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Annotations

1. Construction and application

" ... [T]he Council intended that a public official should be punished for each separate act of soliciting a bribe, entering into an arrangement or agreement for a bribe and/or actually accepting the bribe." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 446-447 (Nav. Sup. Ct. 1991).

" ... [T]he Council intended the law to punish solicitation, acceptance and agreement separately, and to authorize separate or multiple punishments for each." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 446 (Nav. Sup. Ct. 1991).

2. Evidence

"The prosecution may use circumstantial evidence to prove any or all of the elements." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 443 (Nav. Sup. Ct. 1991).

§ 361. Improper influence in official and political matters

A. Offense. A person commits an offense pursuant to this Section if he or she threatens harm to any person, Navajo Nation official, Navajo Nation judge or employee with the intent of influencing such person's vote, opinion, judgment, or exercise of discretion.

B. Sentence.

1. Any person found guilty of improper influence in official and political matters may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 362. Paying or receiving Navajo Nation Government funds for services not rendered

A. Offense. A person commits an offense pursuant to this Section if he or she knowingly makes or receives payment or causes payment to be made from Navajo Nation government funds when such payment purports to be for wages, salary or remuneration for personal services which have not in fact been rendered.

B. Authorized expenditures. Nothing in this section shall be construed to prevent the payment of Navajo Nation government funds where such payments are intended to cover lawful remuneration to Navajo Nation officers or Navajo Nation employees for vacation periods or absences from employment because of sickness, or for other lawful authorized purposes.

C. Sentence.

1. Any person found guilty of paying or receiving Navajo Nation funds for services not rendered may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 363. Making or permitting false Navajo Nation voucher

A. Offense. A person commits an offense pursuant to this Section if he or she knowingly, intentionally or willfully makes, or causes to be made, or permits to be made a material misrepresentation or forged signature upon any Navajo Nation voucher, expense reimbursement form, or invoice supporting a Navajo Nation voucher, with the intent that the voucher, expense reimbursement form, or invoice be relied upon for the unauthorized expenditure of Navajo Nation funds.

B. Sentence.

1. Any person found guilty of making or permitting false Navajo Nation voucher may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan

sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 364. Abuse of office

A. Offense. A person commits abuse of office if he or she acts or purports to act in an official capacity, or takes advantage of such actual or purported capacity, knowing such conduct is unlawful, and:

1. Subjects another to arrest, detention, search or seizure, mistreatment, or dispossession;
2. Infringes upon the personal or property right of another; or
3. Denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity.

B. Sentence.

1. Any person found guilty of abuse of office may be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 365. Forfeiture of Navajo Nation employment or office

Notwithstanding the provisions regarding sentencing of Chapter 2, Subchapter 2 of this Title, a Navajo Nation employee or non-elected public servant convicted of violating any section of this Subchapter shall permanently forfeit his or her employment or office.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Subchapter 8. Obstruction of Navajo Nation Administration

§ 370. Obstruction of justice

A. A person is guilty of an offense if, with intent to hinder, prevent, or delay the discovery, apprehension, prosecution, conviction, or punishment of another for the commission of a crime, he:

1. Knowing an offense has been committed, conceals it from a judge of the Navajo courts;
2. Harbors or conceals the offender;
3. Provides the offender a weapon, transportation, disguise, or other means for avoiding discovery or apprehension;
4. Warns the offender of impending discovery or apprehension;
5. Conceals, destroys, or alters any physical evidence that might aid in the discovery, apprehension, or conviction of the person;
6. Obstructs by force, intimidation, or deception anyone from performing an act that might aid in the discovery, apprehension, prosecution, or conviction of the person; or
7. Having knowledge that a law enforcement officer has been

authorized or has applied for authorization to intercept a wire, electronic, or oral communication, gives notice or attempts to give notice of the possible interception to any person.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 370A. [Repealed]

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CAP-9-79, April 18, 1979.

§ 371. Refusing to aid an officer

A. Offense. A person commits an offense pursuant to this Section if he or she, upon a reasonable command by a peace officer, intentionally or knowingly refuses or fails to aid such officer in:

1. Effectuating or securing an arrest;

2. Preventing the commission by another of an offense as defined in this Title.

B. A person who complies with this Section by aiding a peace officer shall not be held liable to any person for civil damages resulting therefrom, provided he or she acted reasonably under the circumstances known to him or her at the time.

C. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 372. Rescue from lawful custody

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally and without lawful authority rescues or attempts to rescue any person in lawful custody or confinement.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 373. Escape from lawful custody

A. Offense. A person commits an offense pursuant to this Section if he or she escapes or attempts to escape from lawful custody or confinement.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

§ 374. Tampering with a public record

A. Offense. A person commits tampering with a public record if he or she intentionally or knowingly and without proper authority:

1. Makes or completes a written instrument which purports to be a public record or true copy thereof or alters or makes a false entry in a written instrument which is a public record or a true copy thereof;

2. Presents or uses a written instrument which is or purports to be a public record or a copy thereof, knowing that it has been falsely made, completed or altered or that a false entry has been made therein, with intent that it be taken as genuine;

3. Records, registers or files or offers for recordation, registration or filing in a governmental office or agency a written statement which has been falsely made, completed or altered or in which a false entry has been made or which contains a false statement or false information;

4. Destroys, mutilates, conceals, removes or otherwise impairs the availability of any public record;

5. Refuses to deliver a public record in his or her possession upon proper request of a Navajo Nation official entitled to receive such record for examination or other purposes.

B. Public record, for purposes of this Section, means all official books, papers, written instruments or records created, issued, received or kept by any governmental office, department, division, branch or section or required by law to be kept by others for the information of any governmental office.

C. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community

service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 375. Malicious criminal prosecution

A. Offense. A person commits an offense pursuant to this Section if he or she maliciously causes or attempts to cause a criminal charge to be preferred or prosecuted against an innocent person, knowing such person to be innocent.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 376. Unsworn falsification

A. Offense. A person commits unsworn falsification by knowingly:

1. Falsifying, concealing or covering up by any trick, scheme or

device a material fact or making any false, fictitious or fraudulent statements or representations or making or using any false writing or document knowing the same to contain any false, fictitious or fraudulent statement in connection with any matter within the jurisdiction of any Navajo Nation department or agency.

2. Making any false statement or providing any false documents to any prosecutor, special prosecutor or their investigator or agents, or any law enforcement officer, when the person believes the statement or document to be false.

3. Making any statement which he or she believes to be false in regard to a material issue to any Navajo Nation employee in connection with an application for any benefit, privilege, contract, agreement, or license.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CS-60-89, September 15, 1989.

CN-71-77, November 10, 1977.

Note. Previously § 479(B) under Subchapter 18 of this Chapter.

§ 377. Unauthorized Practice of Law

A. Offense. The unauthorized practice of law is committed when, without

being an active member in good standing of the Navajo Nation Bar Association, a person:

1. Provides legal representation before the Courts of the Navajo Nation, any quasi-judicial, administrative, or legislative body to another person; or

2. Provides legal services within the Navajo Nation or to another person within the Navajo Nation, including but not limited to, the rendering of legal advice to another person, the drafting or completion of legal pleadings for another person, or the legal interpretation of documents for another person.

B. Exception. The acts set forth in Subsection (A) shall not be considered the unauthorized practice of law when legal representation is provided to another person in accord with Navajo Nation Court rules allowing association of lawyers unlicensed in the Navajo Nation with a member of the Navajo Nation Bar Association.

C. Sentence

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Annotations

1. Purpose

"As expressed by the Navajo Nation Council through the provision of civil and criminal sanctions, the unauthorized practice of law undermines the integrity

of our legal system." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 5 (Nav. Sup. Ct. August 7, 2006).

2. Person; generally

"The Council went further in Navajo Criminal Code (Criminal Code), by making it a crime for an unauthorized 'person' to practice law within the Navajo Nation, defined as, among other things, a 'person' representing another 'person' before a Navajo administrative body." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 8 (Nav. Sup. Ct. August 7, 2006).

3. Person; corporation

"Assuming that a corporation is a 'person' under the unauthorized practice of law provision, see 17 N.N.C. § 209(R) (2005) (defining 'person' in the Criminal Code as including a corporation 'where relevant'), an employee may still not represent it without a license if he or she is a separate 'person' under that provision." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 10 (Nav. Sup. Ct. August 7, 2006).

"While the resulting corporation is treated as a 'person' for various purposes, the Court holds it has a separate legal existence from its officers and staff and is therefore a separate 'person' for purposes of the prohibition against the unauthorized practice of law. The choice to incorporate carries benefits but also, importantly, consequences. Among the consequences of incorporation is the inability of its agents to represent the corporate entity 'pro se'." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 11 (Nav. Sup. Ct. August 7, 2006).

Subchapter 9. Criminal Damage to Property

§ 380. Criminal damage

A. Offense. A person commits criminal damage if he or she intentionally or recklessly:

1. Defaces or damages tangible property of another person;
2. Tamper with tangible property of another person so as to substantially impair its function or value;
3. Tamper with the tangible property of a utility;
4. Defaces or damages tangible property of the Navajo Nation, of a political campaign or any public property.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo

Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CS-68-82, September 28, 1982.

CN-71-77, November 10, 1977.

Annotations

1. Factors for restitution

"Before restitution can be awarded under the criminal code, and specifically Subsection 380(C), the court must be satisfied with these minimal factors: 1) Is the restitution appropriate in the case; 2) Who is the injured party; 3) What is the extent of the loss or injury; 4) What kind of restitution is appropriate; and 5) If money is to be paid, what amount would satisfy the actual damages requirement." *Navajo Nation v. Blake*, 7 Nav. R. 233, 236 (Nav. Sup. Ct. 1996).

2. Elections; sample ballots

"The rules promulgated by the Board of Election Supervisors and the language of the sample ballot anticipate possible criminal prosecution of the violation under Section 380. That section authorizes several possible remedies after the violator has been found guilty beyond a reasonable doubt through a prosecution under the Criminal Code. 17 N.N.C. § 380(B) (2005). However, nothing states that a candidate's election can be declared invalid, even if the violator was found guilty in a criminal prosecution. Further, OHA nowhere states its authority to take such drastic action and nothing presented to this Court gives OHA such power. [...] Should the Navajo Nation Council wish to empower OHA to invalidate elections for copying or altering sample ballots, it must clearly state that intention." *In the Matter of the Grievance of: Wagner, and concerning, Tsosie*, SC-CV-01-07, slip op. at 5-6 (Nav. Sup. Ct. May 14, 2007).

§ 381. Littering

A. Offense. A person commits an offense pursuant to this Section if he or she throws, places, drops, or disposes of any litter, destructive or injurious material upon lands within the territorial jurisdiction of the Navajo Nation which is not a lawful waste disposal site or receptacle for the disposal of litter.

B. Sentence. Any person found guilty of littering may be sentenced to serve not less than four hours nor more than 20 hours picking up and clearing litter from the highways, roads, or public places of the Navajo Nation.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 382. [Repealed]

History

CN-71-77, November 10, 1977.

§ 383. Desecration of religious or traditional artifacts

A. Any person, group of persons, organization, association or church, who desecrates or unlawfully destroys any religious artifact or traditional relic belonging to another person, group of persons, organization, association or church, or aids, abets or facilitates such desecration or unlawful destruction shall be deemed guilty of an offense, and upon conviction thereof, may be sentenced to imprisonment for a period not in excess of 365 days for a natural person, or shall be fined an amount not to exceed five thousand dollars (\$5,000), or both.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department

of Public Safety or a public or private organization, including the chapter in which the defendant resides.

B. Each act of desecration or unlawful destruction shall constitute a separate offense.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CF-20-78, February 2, 1978.

CN-71-77, November 10, 1977.

Subchapter 10. Controlled Substances

§ 390. Definitions

The following definitions apply in this Subchapter:

A. "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine or substances from which cocaine or ecgonine may be synthesized or made.

B. "Marijuana" means those Cannabis plants that contain an amount equal to or more than one and four-tenths percent (1.4%) tetrahydrocannabinol.

C. "Opium" includes morphine, codeine and heroin, and any compound, manufacture, salt, derivative, mixture or preparation of opium, but does not include apomorphine or any of its salts.

History

CJY-54-00, July 20, 2000. Subsection (B) amended.

CN-71-77, November 10, 1977.

§ 391. Possession of marijuana

A. Offense. The Navajo Nation has a zero tolerance policy relative to the possession of marijuana. A person commits an offense pursuant to this Section if he or she possesses any amount of marijuana and such marijuana is intended for his or her personal use.

B. Sentence.

1. Any person found guilty of violating this Section and in possession of any amount of marijuana shall be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJY-53-00, July 20, 2000. Subsections (A) and (B) amended.

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 392. Production or delivery of marijuana

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly produces, delivers, or possesses marijuana with intent to deliver such marijuana to another.

B. "Deliver" or "delivery" means the actual or constructive transfer of possession of marijuana to another with or without consideration, whether or not there is an agency relationship.

C. Sentence. Any person found guilty of producing, selling or delivering marijuana may be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 393. Delivery of marijuana to minors

A. Offense. A person commits an offense pursuant to this Section if he or she is at least 18 years of age, and violates 17 N.N.C. § 391 by delivering marijuana to a person under 18 years of age.

B. "Deliver" or "delivery" means the actual or constructive transfer of possession of marijuana, with or without consideration, whether or not there is any agency relationship.

C. Sentence. Any person found guilty of delivering marijuana to minors may be sentenced to imprisonment for a term not to exceed 365 days and to pay a fine not to exceed five thousand dollars (\$5,000).

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CO-74-78, October 5, 1978.

CN-71-77, November 10, 1977.

§ 394. Possession or sale of controlled substances

A. Offense. A person commits an offense pursuant to this section if he or she possesses, manufactures, transports, sells, uses, trades or delivers:

1. Opium or coca leaves, or any compound, manufacture, salt, derivative, mixture or preparation thereof, apomorphine and its salts excepted, and including the following:

- a. Acetorphine;
- b. Acetyldihydrocodeine;
- c. Benylmorphine;
- d. Codeine;
- e. Codeine methylbromide;
- f. Codeine-n-oxide;
- g. Cyprenorphine;
- h. Desomorphine;
- i. Dihydromorphine;
- j. Drotebanol;
- k. Ethylmorphine;
- l. Etorphine;

- m. Heroin;
- n. Hydrocodone;
- o. Hydromorphenol;
- p. Hydromorphone;
- q. Methyldesorphine;
- r. Methyldihydromorphone;
- s. Metopon;
- t. Morphine;
- u. Morphine methylbromide;
- v. Morphine methylsulfonate;
- w. Morphine-n-oxide;
- x. Myrophine;
- y. Nalorphine;
- z. Nicocodeine;
- aa. Nicomorphine;
- bb. Normorphine;
- cc. Oxycodone;
- dd. Oxymorphone;
- ee. Pholocodine;
- ff. Thebacon;
- gg. Thebaine;
- hh. Cocaine.

2. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers:

- a. Lysergic acid diethylamide;
- b. Mescaline;
- c. Psilocybin;

- d. Psilocyn;
- e. Hashish;
- f. Peyote;
- g. 4-bromo-2, 5-dimethoxyamphetamine;
- h. Bufotenine;
- i. Diethyltryptamine;
- j. 2, 5-dimethoxyamphetamine;
- k. Dimethyltryptamine;
- l. 5-methoxy-3, 4-methylenedioxyamphetamine;
- m. 4-methyl-2, 5-dimethoxyamphetamine;
- n. Ibogaine;
- o. Lysergic acid amide;
- p. Methoxymethylenedioxyamphetamine (MMDA);
- q. Methylenedioxyamphetamine (MDA);
- r. 3, 4-metyulenedioxymethamphetamine;
- s. 3, 4-methylenedioxy-n-ethylamphetamine;
- t. N-ethyl-3-piperidyl benzilate (JB-318);
- u. N-hydroxy-3, 4-methylenedioxyamphetamine;
- v. N-methyl-3-piperidyl bezilate (JB-336);
- w. N-(1-phenylcyclohexyl) ethylamine (PCE);
- x. Nabilone;
- y. 1-(1-phenylcyclohexyl) pyrrolidine (PHP);
- z. 1-(1-(2-thienyl)-cyclohexyl) pyrrolidine;
- aa. Para-methoxamphetamine (PMA);
- bb. Synhexyl;
- cc. Trimethoxyamphetamine.

3. Any material, compound, mixture or preparation which contains an

amount equal to or more than 1.4% quantity of tetrahydrocannabinol (T.H.C.).

4. Any material, compound, mixture or preparation which contains any quantity of the following substances and their salts, isomers, and salts of isomers having a potential for abuse associated with a stimulant effect on the central nervous system:

- a. Amphetamine;
- b. Benzphetamine;
- c. Cathine ((+)-norpseudoephedrine);
- d. Clorpheniramine;
- e. Clortermine.
- f. Diethylpropion;
- g. Fencamfamin;
- h. Fenethylline;
- i. Fenproporex;
- j. Mazindol;
- k. Mefenorex;
- l. Methamphetamine;
- m. 4-methylaminorex;
- n. Methylphenidate;
- o. N-ethylamphetamine;
- p. N, N-dimethylamphetamine;
- q. Pemoline;
- r. Phendimetrazine;
- s. Phenmetrazine;
- t. Pipradol;
- u. Propylhexedrine;
- v. Pyrovalerone;
- w. Spa ((-)-1-dimethylamino-1,2-diphenylethane).

5. 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:

a. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, unless specifically excepted;

- b. Alprazolam;
- c. Bromazepam;
- d. Camazepam;
- e. Chloral betaine;
- f. Chloral hydrate;
- g. Chlordiazepoxide;
- h. Chlorhexadol;
- i. Clobazam;
- j. Clonazepam;
- k. Clorazepate;
- l. Clotiazepam;
- m. Cloxazolam;
- n. Delorazepam;
- o. Diazepam;
- p. Estazolam;
- q. Ethchlorvynol;
- r. Ethinamate;
- s. Ethyl loflazepate;
- t. Fenfluramine;
- u. Fludiazepam;
- v. Flunitrazepam;
- w. Flurazepam;
- x. Gamma hydroxy butyrate;

y. Glutethimide;
z. Halazepam;
aa. Haloxazolam;
bb. Ketamine;
cc. Ketazolam;
dd. Loprazolam;
ee. Lorazepam;
ff. Lormetazepam;
gg. Lysergic acid;
hh. Metabutamate;
ii. Mecloqualone;
jj. Medazepam;
kk. Meprobamate;
ll. Methaqualone;
mm. Methylprylon;
nn. Midazolam;
oo. Nimetazepam;
pp. Nitrazepam;
qq. Nordiazepam;
rr. Oxazepam;
ss. Oxazolam;
tt. Paraldehyde;
uu. Petrichloral;
vv. Phencyclidine;
ww. Pinazepam;
xx. Praxepam;
yy. Scopolamine;

- zz. Sulfondiethylmethane;
- aaa. Sulfoethylmethane;
- bbb. Sulfomethane;
- ccc. Quazepam;
- ddd. Temazepam;
- eee. Tetrazepam;
- fff. Tiletamine;
- ggg. Triazolam;
- hhh. Zolazepam.

6. Narcotic drugs, including the following, whether of natural or synthetic origin and any substance neither chemically or physically distinguishable from them:

- a. Acetyl-alpha-methylfentanyl;
- b. Acetylmethadol;
- c. Alfentanil;
- d. Allyprodine;
- e. Alphacetylmethadol;
- f. Alphameprodine;
- g. Alphamethadol;
- h. Alphamethylfentanyl;
- i. Alphamethyllofentanyl;
- j. Alphaprodine;
- k. Amidone (methadone);
- l. Anileridine;
- m. Benzethidine;
- n. Benzylfentanyl;
- o. Betacetylmethadol;
- p. Betahydroxyfentanyl;

q. Betahydroxy-3-methylfentanyl;
r. Betameprodine;
s. Betamethadol;
t. Betaprodine;
u. Bezitramide;
v. Buprenorphine and its salts;
w. Cafentanil;
x. Clonitazene;
y. Detropoxyphene;
z. Diampromide;
aa. Diethylthiambutene;
bb. Difenoxin;
cc. Dihydrocodeine;
dd. Dimenoxadol;
ee. Dimepheptanol;
ff. Dimethylthiambutene;
gg. Dioxaphetyl butyrate;
hh. Diphenoxylate;
ii. Dipipanone;
jj. Ethylmethyliambutene;
kk. Etonitazene;
ll. Etoxidine;
mm. Fentanyl;
nn. Furethidine;
oo. Hydroxypethidine;
pp. Isoamidone (isomethadone);
qq. Isonipeccaine;

rr. Ketobemidone;
ss. Levomethorphan;
tt. Levoaramide;
uu. Levophenacetylmorphan;
vv. Levorphanol;
ww. Metazocine;
xx. 3-methylfentanyl;
yy. 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);
zz. 3-Methylthiofentanyl;
aaa. Morpheridine;
bbb. Noracymethadol;
ccc. Norlevorphanol;
ddd. Normethadone;
eee. Norpipanone;
fff. Paraflourofentanyl;
ggg. Pentazocine;
hhh. Phenadoxone;
iii. Phenampromide;
jjj. Phenazocine;
kkk. 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP);
lll. Phenomorphan;
mmm. Phenoperidine;
nnn. Piminodine;
ooo. Piritramide;
ppp. Prohepatazine;
qqq. Properidine;
rrr. Propiram;

sss. Racemethorphan;
ttt. Racemoramide;
uuu. Racemorphan;
vvv. Sufentanil;
www. Thenylfentanyl;
xxx. Thiofentanyl;
yyy. Tilidine;
zzz. Trimeperidine.

B. Defense. It is a defense to a prosecution under this section that the controlled substance or narcotic was obtained directly from or pursuant to a valid prescription or order issued by a practitioner acting in the course of his or her professional practice.

C. Peyote. The listing of peyote (more commonly known as azee') in Subsection A does not apply to the use of azee' by an enrolled member of an Indian tribe for bona fide ceremonial purposes in connection with nahaghá. Individuals who use, possess, or transport azee' for use in nahaghá are exempt from this prohibition. Azee' is lawful on the Navajo Nation.

D. Sentence.

1. Any person found guilty of possession or sale of controlled substances shall be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars \$5,000, or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the

Chapter in which the defendant resides.

E. Rehabilitation. At the discretion of the court, any person found guilty of violating this section, and found to be addicted to a controlled substance, may be ordered to receive rehabilitative treatment pursuant to 17 N.N.C. § 220.

History

CJY-52-05, July 28, 2005. Subsection (C) amended.

CF-12-05, February 11, 2005.

CJY-54-00, July 20, 2000. Subsection (A) amended.

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 395. Forfeiture and destruction of controlled substances

A. Upon the conviction of any person based upon violation of this Subchapter, the court shall order the marijuana, controlled substance or narcotic forfeited to the Navajo Nation and destroyed or otherwise disposed of.

B. A record of the place where such controlled substance or narcotic was seized, the kinds and quantities of the substance or narcotic so destroyed, and the time, place and manner of destruction shall be kept, and a return under oath reporting such destruction shall be made to the court by the officer who destroys such controlled substance or narcotic.

C. The handling and disposition of azee' seized pursuant to this subchapter shall be regulated by administrative order of a district court judge of the Navajo Nation Courts, taking into consideration and accommodating the ceremonial use of azee' and following the guidance of the leaders of those who participate in such ceremony.

History

CJY-52-05, July 28, 2005. Subsection (C) added.

CN-71-77, November 10, 1977.

Note. Subsection (B) slightly reworded.

Subchapter 11. Obscenity

§ 400. Definitions

The following definitions apply in this Subchapter:

A. "Displays publicly" means the exposing, placing, posting, exhibiting

or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a public thoroughfare, depot, or vehicle.

B. "Furnishes" means to sell, give, rent, loan or otherwise provide.

C. "Minor" means a person under eighteen (18) years of age.

D. "Sadomasochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

E. "Sexual conduct" means human masturbation, sexual intercourse, or any direct or indirect touching of the genitals, pubic area or anus of the human male or female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 401. Furnishing sexual materials to minors

A. Offense. A person commits furnishing sexual materials to minors if, knowing or having good reason to know the character of the material furnished, he or she intentionally or knowingly furnishes to a minor:

1. Any picture, photograph, drawing, sculpture, motion picture, film, electronic or other visual representation or image of a person or portion of a human body that depicts sadomasochistic abuse or sexual conduct; or

2. Any book, magazine, paperback, pamphlet or other written or printed matter, electronic medium however reproduced, or any sound recording which contains matter of the nature described in Subsection (A)(1) of this Section, or explicit verbal descriptions or narrative accounts of sexual conduct or sadomasochistic abuse.

B. Sentence.

1. Any person found guilty of violating this Section shall be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 402. Displaying sexual materials to minors

A. Offense. A person commits displaying sexual materials to minors if, being the owner, operator or manager of a business or acting in managerial capacity thereof, he or she intentionally, knowingly or recklessly permits a minor who is not accompanied by his or her parent or lawful guardian to enter or remain on the premises, if in that part of the premises where the minor is so permitted to be, there is visibly displayed:

1. Any picture, photograph, drawing, sculpture, film, electronic or other visual representation or image of a person or portion of the human body that depicts sexual conduct or sadomasochistic abuse; or

2. Any book, magazine, paperback, pamphlet or other written or printed matter, electronic medium, however reproduced, that reveals a person or portion of the human body that depicts sexual conduct or sadomasochistic abuse.

B. Sentence.

1. Any person found guilty of violating this Section shall be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo

Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 403. Defenses to prosecution

It shall be a defense to any prosecution under 17 N.N.C. §§ 401 and 402:

A. That the materials were being used for purely educational, scientific, charitable, or religious purposes by a religious association, library, museum, public school, private school or institution of learning or scientific research; or

B. That the defendant was charged with the sale, showing, exhibition or display of an item, those portions of which might otherwise be contraband forming merely an incidental part of an otherwise non-offending whole, and serving some legitimate purpose therein other than titillation.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 404. Destruction of obscene material upon conviction

Upon the conviction of any person for a violation of this Subchapter, the materials which were the subject of the conviction may be destroyed.

History

CN-71-77, November 10, 1977.

Subchapter 12. Intoxicating Liquors

§ 410. Possession of liquor

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly possesses, or transports any beer, ale, wine, whiskey or any other beverage which produces alcoholic intoxication, and such alcoholic beverage is intended for his or her personal use.

B. Sentence.

1. Any person found guilty of possession of liquor may for a first offense be ordered to pay a fine not to exceed fifty dollars (\$50.00).

2. Upon subsequent conviction of possession of liquor within a period of 180 days of any previous conviction based upon violation of this Section, he or she may be ordered to pay a fine not to exceed one hundred dollars (\$100.00).

C. Rehabilitation. At the discretion of the court, any person found guilty of violating this Section, and found to be addicted to alcohol, may be ordered to receive rehabilitative treatment pursuant to Section 220 of this Title.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Annotations

1. Construction and application

"Through clear provisions of the Navajo Nation Code, the Council has outlawed alcohol on the Nation, 17 N.N.C. §§ 410-412 (2005), has made providers of liquor liable for injuries arising out of consumption of their liquor, 7 N.N.C. § 207 (1995) [\$ 631 in 2005], and, most importantly for this case, asserts personal jurisdiction over liquor sellers located outside the Navajo Nation when their liquor causes injuries on the Nation, 7 N.N.C. § 253a(C)(8) (2005)." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 5-6 (Nav. Sup. Ct. April 30, 2007).

§ 411. Manufacture or delivery of liquor

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly manufactures, delivers, or possesses, with intent to deliver, any beer, ale, wine, whiskey, or any other beverage which produces alcoholic intoxication.

B. "Deliver" or "delivery" means the actual or constructive transfer of possession of any alcoholic beverage as described above, with or without

consideration, whether or not there is an agency relationship.

C. Presumption. The possession of 12 or more bottles of beverages with an alcohol content of ten percent (10%) or greater, or the possession of 24 or more bottles or cans of beverages with an alcohol content of less than ten percent (10%) shall give rise to the rebuttable presumption that the person possessed such quantity of alcoholic beverages intending to deliver the same.

D. Sentence.

1. Any person found guilty of violating this Section may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

E. Tort liability. Any person who directly gives, sells, or otherwise provides liquor or any alcoholic beverage to any other person shall be strictly liable for any personal injuries, property damage, means of support to any third person (or to the spouse, child or parent of that third person), or to a person who may bring an action for wrongful death where:

1. The person who obtained the liquor or alcoholic beverage consumed the same;

2. The consumption of the liquor or alcoholic beverage was a proximate cause of the injury, death or property damage.

For the purposes of this Subsection, if it is found that the person who obtained the liquor or alcoholic beverage causes injuries or property damage as a result of the consumption of the liquor or alcoholic beverage within a reasonable period of time following his or her first obtaining the liquor or alcoholic beverage, it shall create a rebuttable presumption that the person

consumed the liquor or alcoholic beverage provided to him or her by the person who gave, sold or otherwise provided the liquor or alcoholic beverage.

If a person having rights or liabilities under this Subsection dies, the rights or liabilities provided by this Subsection survive to or against that person's estate.

An action based upon a cause of action under this Subsection shall be commenced within five (5) years after the date of injury or property damage.

Nothing in this Subsection precludes any cause of action or additional recovery against the person causing the injury.

F. Civil forfeiture. Any personal or real property of any person found liable for an offense under this Section, whether criminally or civilly, is subject to forfeiture to the Navajo Nation if the following conditions are met:

1. A person is found to have committed an offense under this Section;

2. There is proof, by at least a preponderance of the evidence, that the property was used in connection with the manufacture, delivery, possession, or transfer of any liquor or alcoholic beverage;

3. The person liable for an offense under this Section has received notice of the proposed forfeiture and provided an opportunity to be heard on that issue.

For the purposes of this Subsection, notice of a proposed forfeiture shall be deemed adequate if the forfeiture is alleged in a complaint for an offense under this Section and the property to be forfeited is described with particularity.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Annotations

1. Construction and application

"Through clear provisions of the Navajo Nation Code, the Council has outlawed alcohol on the Nation, 17 N.N.C. §§ 410-412 (2005), has made providers of liquor liable for injuries arising out of consumption of their liquor, 7 N.N.C. § 207 (1995) [now § 631], and, most importantly for this case, asserts personal jurisdiction over liquor sellers located outside the Navajo Nation when their liquor causes injuries on the Nation, 7 N.N.C. § 253a(C)(8) (2005)." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 5-6 (Nav. Sup. Ct. April 30, 2007).

§ 412. Exceptions

A. It shall not be unlawful for any person to sell, manufacture, deliver or transport intoxicating liquor if such liquor is intended for scientific, sacramental, medicinal or mechanical purposes.

B. For the purposes of this Subchapter, "Navajo Indian Country" does not include rights-of-way when intoxicating liquor is being transported through Navajo Indian Country in unbroken packages or in containers with unbroken federal tax stamps.

C. It shall not be unlawful for any person, Indian, or non-Indian, to sell, deliver, transport or consume intoxicating liquor in that part of the Navajo Nation covered by the Antelope Point Resort and Marina Business Site Lease provided that:

1. The transportation, sale, delivery and consumption of alcoholic beverages is in conformity with applicable state regulatory liquor law, specifically excluding any state regulatory liquor laws which would require the Navajo Nation and/or its Lessee to be licensed by the State of Arizona, or to be in any way subject to the administrative, executive, judicial or legislative jurisdiction of the State or Arizona; and

2. All sales of alcoholic beverages be at prices no less than the prices charged for similar products in adjoining areas of the State of Arizona.

The Navajo Tax Commission is hereby authorized to approve such rules and regulations as are necessary and appropriate to ensure the proper transportation, sale, delivery and consumption of alcoholic beverages within the area of the Antelope Point Business Site Lease.

D. It shall not be unlawful for any person, Indian, or non-Indian, to sell, deliver, transport or consume intoxicating liquor within a duly authorized Navajo casino facility provided that:

1. The host Navajo Nation chapter approves the sale of the alcoholic beverages;

2. The transportation, sale, delivery and consumption of alcoholic beverages is in conformity with the applicable state gaming compact and with applicable state regulatory liquor laws, specifically excluded are any and all state regulatory liquor laws which would require the Navajo Nation and/or its business site lessee to be licensed by the state, or to be in any way subject to the administrative, executive, judicial or legislative jurisdiction of the state; and

3. The sale of alcoholic beverages shall be within the confines of the dining area of the Navajo casino facility.

The Navajo Tax Commission is hereby authorized to approve such rules and regulations as are necessary and appropriate to ensure the proper transportation, sale, delivery and consumption of alcoholic beverages.

History

CJA-03-08, January 31, 2008. Authorized the Navajo Tax Commission to exercise regulatory authority and added subsection D. Effective June 1, 2008.

CJY-62-01, July 20, 2001. Subsection (C) added.

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Annotations

1. Construction and application

"Through clear provisions of the Navajo Nation Code, the Council has outlawed alcohol on the Nation, 17 N.N.C. §§ 410-412 (2005), has made providers of liquor liable for injuries arising out of consumption of their liquor, 7 N.N.C. § 207 (1995) [now § 631], and, most importantly for this case, asserts personal jurisdiction over liquor sellers located outside the Navajo Nation when their liquor causes injuries on the Nation, 7 N.N.C. § 253a(C)(8) (2005)." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 5-6 (Nav. Sup. Ct. April 30, 2007).

Subchapter 13. Gambling

§ 420. Definitions

The following definitions are applicable in this Subchapter:

A. "Gambling" means taking or risking something of value upon the outcome of a contest of chance or a future contingent event, not under his or her control or influence, upon an agreement or understanding that he or she will receive something of value in the event of a certain outcome. Gambling does not include playing of an electromechanical pinball machine. Gambling does not include any authorized bingo, raffles, or lotteries conducted by religious, charitable, or non-profit organizations for the purpose of raising funds.

B. "Unlawful gambling" means any gambling activity not specifically authorized by law. Unlawful gambling does not include lotteries when engaged and conducted under license by the Navajo Nation for purposes of fostering economic initiatives of the Navajo Nation government.

C. "Gambling device" means any device, machine, paraphernalia or equipment which is used or usable in the playing phases of any unlawful gambling activity, whether such activity consists of gambling between persons or gambling by persons involving the playing of a machine. "Gambling device" does not mean within this definition electromechanical pinball machines specially designed, constructed, set-up and kept to be played for amusement. Nonetheless, a pinball machine shall be a gambling device if a person gives or promises to give money, tokens, merchandise, premiums or property of any kind for scores, combinations or free games obtained in playing such pinball machine in which such person has an interest as owner, operator, keeper or otherwise.

D. These terms shall not include any traditional forms of Navajo gambling, including but not limited to shoe games, horse racing, foot racing, Navajo ten and five card games, rodeo calcutta, stick games, chicken pull and pow wows.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJY-51-95, July 19, 1995, Section generally amended.

CN-71-77, November 10, 1977.

§ 421. Promotion of unlawful gambling

A. Offense. A person commits promotion of unlawful gambling if he or she derives or intends to derive an economic benefit other than personal winnings from gambling and:

1. Induces or aids another to engage in gambling; or
2. Knowingly invests in, finances, owns, controls, supervises, manages, or participates in any gambling.

B. Exceptions. It shall not be unlawful for any person to engage in the activities constituting this offense within the Tóhajiilee Chapter of the Navajo Nation and a Navajo Nation certified chapter that approves gaming within the chapter such as Shiprock Chapter, Manuelito Chapter, Tóhajiilee Chapter, Nahat'ádzill Chapter, Leupp Chapter and Tsé Daak'áán Chapter, if done pursuant to a gaming compact entered into between the Navajo Nation and the applicable states.

C. Sentence. Any person found guilty of violating this Section shall forfeit to the Navajo Nation any and all proceeds and devices obtained through the activities constituting this offense.

History

CN-59-06, November 1, 2006. Subsection (B) amended to change the name of Hogback Chapter to Tsé Daak'áán Chapter.

CJY-40-04, July 23, 2004, Subsection (B) amended.

CJY-55-00, July 20, 2000, Subsection (B) amended.

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJY-51-95, July 19, 1995, Section generally amended.

CN-81-93, November 18, 1993.

CN-71-77, November 10, 1977.

§ 422. Possession of an unlawful gambling device

A. Offense. A person commits possession of an unlawful gambling device if, with knowledge of the character thereof, he or she manufactures, sells, transports, places or possesses, or conducts or negotiates a transaction affecting or designed to affect ownership, custody, or use of, a slot machine or any other gambling device knowing it is to be used in promoting unlawful gambling.

B. Exceptions. It shall not be unlawful for any person to engage in the activities constituting this offense within the Tóhajiilee Chapter of the Navajo Nation and a Navajo Nation certified chapter that approves gaming within the chapter such as Shiprock Chapter, Manuelito Chapter, Tóhajiilee Chapter, Nahat'ádzill Chapter, Leupp Chapter and Tsé Daak'áán Chapter, if done pursuant to a gaming compact entered into between the Navajo Nation and the applicable states.

C. Sentence. Any person found guilty of possession of a gambling device shall forfeit to the Navajo Nation any and all proceeds and devices obtained through the activities constituting this offense.

History

CN-59-06, November 1, 2006. Subsection (B) amended to change the name of Hogback Chapter to Tsé Daak'áán Chapter.

CJY-40-04, July 23, 2004, Subsection (B) amended.

CJY-55-00, July 20, 2000, Subsection (B) amended.

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJY-51-95, July 19, 1995, Section generally amended.

CN-81-93, November 18, 1993.

CN-71-77, November 10, 1977.

§ 423. Forfeiture of gambling device

Any unlawful gambling device or slot machine which is manufactured, transferred, possessed or used in violation of Section 422 of this Title shall be forfeited and destroyed when so ordered by a court of the Navajo Nation.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJY-51-95, July 19, 1995, Section generally amended.

CN-71-77, November 10, 1977.

Subchapter 14. Prostitution

§ 430. Definitions

The following definitions are applicable in this Subchapter:

A. "Sexual conduct" means sexual contact, sexual intercourse and oral sexual contact.

B. "Sexual contact" means any direct or indirect fondling or manipulating of any part of the genitals, anus, or female breast.

History

CN-71-77, November 10, 1977.

§ 431. Prostitution

A. Offense. A person commits an offense pursuant to this Section if he or she engages in or agrees or offers to engage in sexual conduct with another person under a fee arrangement.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 432. Promotion of prostitution

A. Offense. A person commits promotion or prostitution if he or she knowingly finances, compels, manages, supervises or controls either alone or in association with others, prostitution activity.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Subchapter 15. Sexual Offenses

§ 440. Definitions

A. "Sexual contact" means any direct or indirect fondling or manipulating of any part of the genitals, anus or female breast.

B. "Spouse" means a person who is recognized as the husband or wife of another person pursuant to Title 9 of this Code.

C. "Without consent" means:

1. The victim is reasonably coerced by the immediate use or threatened use of force against a person or property; or

2. The victim is incompetent to consent by reason of mental disorder, drugs, alcohol, sleep or any other similar impairment of cognition unless at the time the defendant engaged in the conduct constituting the offense he or she did not know and could not reasonably have known of the facts or conditions responsible for such incompetency to consent; or

3. The victim is intentionally deceived as to the nature of the act; or

4. The victim is intentionally deceived to erroneously believe that the person is the victim's spouse.

History

CO-74-78, October 5, 1978.

CN-71-77, November 10, 1977.

§ 441. Adultery

A. Offense. A person commits adultery if he or she intentionally or knowingly:

1. If married, engages in sexual intercourse with one other than his or her spouse; or

2. If unmarried, engages in sexual intercourse with a married person.

B. No prosecution for adultery shall be commenced except upon complaint of the husband or wife not committing the offense.

C. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department

of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 442. Public sexual indecency

A. Offense. A person commits an offense pursuant to this Section if he or she:

1. Exposes his or her genitals to public view under circumstances which he or she should know is likely to offend or alarm others;
2. In a public place, engages in an act of sexual contact; or
3. In a public place, engages in an act of sexual intercourse.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 443. Sexual assault

A. Offense. A person commits sexual assault if he or she intentionally or knowingly engages in sexual intercourse or sexual contact with any person without consent of that person.

B. Sentence. Any person found guilty of sexual assault may be sentenced to imprisonment for a term not to exceed 180 days or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

C. Defense. It is a defense to a prosecution under this Section that the victim's lack of consent is based on incapacity to consent because he or she was 16 or 17 years of age.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 443A. Aggravated sexual assault

A. Offense. A person commits aggravated sexual assault if he or she intentionally or knowingly in the course of committing sexual assault or attempted sexual assault:

1. Causes bodily injury to the victim;
2. Uses or threatens the victim by use of a deadly weapon;
3. Compels, or attempts to compel, the victim to submit to sexual assault by threat of kidnapping, death, or serious bodily injury to be inflicted imminently upon any person.

B. Sentence. A person found guilty of aggravated sexual assault may be sentenced to imprisonment for a term not to exceed 365 days or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

§ 444. Seduction

A. Offense. A person commits seduction if he or she has sexual intercourse or sexual contact with another person, not his or her spouse, if the other person is less than 16 years old.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Subchapter 16. Offenses Against the Family

§ 450. Definition

The following definition is applicable to this Subchapter:

"Sexual conduct" means sexual contact as that term is defined in Section 440(A) of this Title, or sexual intercourse.

History

CN-71-77, November 10, 1977.

§ 451. Bigamy

A. Offense. A person commits bigamy if he or she intentionally or knowingly marries or purports to marry another person at a time when either is lawfully married.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing

recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 452. Incest

A. Offense. A person commits incest if he or she knowingly engages in sexual conduct with another who is related to such person by whole or half-blood, as an ancestor or descendant, a brother or sister, or an uncle, niece, aunt, nephew or first cousin.

B. Sentence.

1. Any person found guilty of incest may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community

service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 453. Sexual conduct with a foster child or stepchild

A. Offense. A person commits sexual conduct with a foster child or stepchild if he or she intentionally or knowingly engages in unprivileged sexual conduct with his or her foster child or step-child who is under 18 years of age.

B. Sentence.

1. Any person found guilty of violating this Section shall be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 454. Abandonment of a child

A. Offense. A person commits abandonment of a child if, as a parent, guardian or other person having custody of a child, he or she intentionally or knowingly abandons a child under 18 years of age.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 455. Persistent nonsupport

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally and persistently fails to provide food, shelter, clothing, medical attention, financial support or other necessary care which he or she can provide and is legally obliged to provide to a spouse, child or other dependent.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require

the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

C. Payment of actual damages. In addition to or in lieu of the sentence described above, the court at its discretion may require the defendant to pay actual damages, plus reasonable interest and costs of collection, for the benefit of the spouse, child or other dependent.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Note. Subsection (C) slightly reworded for grammatical purposes.

Navajo Nation Child Support Enforcement Act, see 9 N.N.C. § 1701 *et seq.*

§ 456. Endangering the welfare of a minor

A. Offense. A parent, guardian or any other person commits endangering the welfare of a minor if he or she intentionally or knowingly contributes, encourages or causes a person under 18 years of age:

1. To be subjected to the infliction of physical or mental injury including failing to maintain reasonable care and treatment thereof; or

2. To be habitually truant from school or a runaway from a parent or guardian or otherwise incorrigible; or

3. To live in a home, which by reason of neglect, cruelty or depravity is an unfit place.

B. Construction to be given this Section. This Section shall be liberally construed in favor of the Navajo Nation for the protection of the minor from neglect or omission of parental duty toward the child, and also to protect children of the Navajo Nation from the effects of the improper conduct, acts or bad example of any person which may be calculated to cause, encourage or contribute to the adverse welfare of minors, although such person is in no

way related to the minor.

C. Any person having cause to believe that a minor has received physical injury as a result of unusual or unreasonable physical abuse or neglect should report or cause reports to be made in accordance with the provisions of this Section.

D. An oral report should be made as soon as possible by telephone or otherwise and may be followed by a report in writing to the local Navajo Nation Police unit. Such report should contain the name and address of the minor, if known by the person making the report, and any other information the person making the report believes might be helpful in establishing the cause of the injuries and the identity of the perpetrator.

E. Any person or institution making report in good faith pursuant to this Section shall have immunity from any liability, civil or criminal, that might be otherwise incurred or imposed. Any person or institution making a report in good faith pursuant to this Section shall have the same immunity with respect to participation in any proceeding resulting from such report.

F. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Subchapter 17. [Reserved]

§§ 460 to 466. [Reserved]

History

Note. CMY-27-06, May 12, 2006, the Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006, deleted Subchapter 17, Animals; Livestock, previously enacted by CJA-08-00, January 27, 2000; and CN-71-77, November 10, 1977.

Subchapter 18. Interference with Judicial Proceedings

§ 470. Definitions

The following definitions are applicable in this Subchapter:

A. "Benefit" means any present or future gain or advantage to a beneficiary or to a third person pursuant to the desire or consent of the beneficiary .

B. "Juror" means any person who is a member of any impaneled jury and includes any person who has been drawn or summoned to attend as a prospective juror.

C. "Official proceeding" means a proceeding heard before any standing committee of the Navajo Nation Council, judicial proceeding or before an official authorized to hear evidence under oath.

D. "Testimony" includes oral or written statements, documents or any other material that may be offered by a witness in an official proceeding.

History

CN-71-77, November 10, 1977.

§ 471. Influencing a witness

A. Offense. A person commits influencing a witness if he or she threatens a witness, or offers, confers or agrees to confer any benefit upon a witness in any official proceeding, or a person he or she believes may be called as a witness, with intent to:

1. Influence the testimony of that person; or
2. Induce that person to avoid legal process summoning him or her to testify; or
3. Induce that person to absent himself or herself from any official proceeding to which he or she has been legally summoned.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or

nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 472. Receiving a bribe by a witness

A. Offense. A witness in an official proceeding, or a person who believes he or she may be called as a witness, commits receiving a bribe by a witness if he or she intentionally or knowingly solicits, accepts or agrees to accept any benefit upon an agreement or understanding that:

1. His or her testimony will thereby be influenced; or

2. He or she will attempt to avoid legal process summoning him or her to testify; or

3. He or she will absent himself or herself from any official proceeding to which he or she has been legally summoned.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or

security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 473. Influencing a juror

A. Offense. A person commits an offense pursuant to this Section if he or she threatens a juror or offers, confers or agrees to confer a benefit upon a juror with the intent to influence the juror's vote, opinion, decision or other action as a juror.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 474. Receiving a bribe by a juror

A. Offense. A juror commits an offense pursuant to this Section if he or she intentionally or knowingly solicits, accepts or agrees to accept any benefit upon an agreement or understanding that his or her vote, opinion, decision or other action as a juror may thereby be influenced.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 475. Jury tampering

A. Offense. A person commits jury tampering if, with intent to influence a juror's vote, opinion, decision or other action in a case, he or she, directly or indirectly, communicates with a juror other than as part of the normal proceedings of the case.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 476. Tampering with physical evidence

A. Offense. A person commits tampering with physical evidence if, with intent that it be used, introduced, rejected or unavailable in an official proceeding which is then pending or which such person knows is about to be instituted, he or she:

1. Destroys, mutilates, alters, conceals or removes physical evidence with the intent to impair its verity or availability; or

2. Knowingly makes, produces or offers any false physical evidence; or

3. Prevents the production of physical evidence by an act of force, intimidation or deception against any person.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan

sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 477. Interfering with judicial proceedings

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly:

1. Engages in disorderly, disrespectful or insolent behavior during the session of a court which directly tends to interrupt its proceedings or impairs the respect due to its authority after being advised by the court to cease; or

2. Disobeys or resists the lawful order, process or other mandate of a court; or

3. Refuses to be sworn as a witness in any court proceeding; or

4. Refuses to serve as a juror; or

5. Fails inexcusably to attend a trial at which he or she has been chosen to serve as a juror.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district

Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Annotations

1. Sentences

"Under DAPA the district court only has jurisdiction to enforce a protection order through prosecution for interfering with judicial proceedings under 17 N.N.C. § 477. See 9 N.N.C. §§ 1651(A)(1); 1663(A). As the respondent is charged under 17 N.N.C. § 477, the district court must follow the Criminal Code's sentencing provisions for that offense, even in DAPA situations. Nothing in DAPA allows the district court the additional authority to reach beyond the sentencing restrictions in Section 477 merely because the offense arose out of the violation of a protection order." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 7 (Nav. Sup. Ct. May 24, 2004).

"The plain language of the revised section concerning the offense of interfering with judicial proceedings only allows the district court to order *nályééh*, a peace or security bond, and/or sentence of labor or community service. 17 N.N.C. § 477(B) (as amended by Resolution No. CJA-08-00)." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

"The issue in this case is whether incarceration for the offense of interfering with judicial proceedings is legal. We agree with petitioner that a jail sentence under 17 N.N.C. § 477 is illegal." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 4 (Nav. Sup. Ct. May 24, 2004).

2. Review

"The district court's jail sentence was clearly outside of its discretionary boundaries, and amounts to legislating from the bench. That is impermissible. The district court therefore lacked the authority to incarcerate Petitioner under either docket number for interfering with judicial proceedings." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5, 6 (Nav. Sup. Ct. May 24, 2004).

§ 478. Simulating legal process

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly sends or delivers to another any document

purporting to be an order or other document that simulates civil or criminal process, including process which is otherwise proper but which is not authorized by the laws of the Navajo Nation.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 479. Perjury

A. Perjury.

1. Offense. Perjury consists of making a false statement under oath or affirmation, material to the issue or matter involved in the course of any judicial, administrative, legislative or other official proceeding, knowing such statement to be untrue.

2. Offense. Whoever procures another to commit any perjury is guilty of subornation of perjury.

B. Sentence. Any person found guilty of violating this Section may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal

Code.

CN-71-77, November 10, 1977.

Note. For statutory format, subsection on "Unsworn Falsification" enacted by CS-60-89 originally as § 479(2) redesignated at 17 N.N.C. § 376.

Subchapter 19. Offenses Against the Public Order

§ 480. Definitions

The following definitions are applicable in this Subchapter:

A. "Public" means affecting or likely to affect a substantial group of persons.

B. "Public place" means a place to which the public or a substantial group of persons has access and includes but is not limited to highways, schools, parks, places of business, playgrounds and hallways, lobbies and other portion of motels or hotels not constituting rooms or apartments designed for actual residence. A public place shall include the immediate area, both inside and outside a structure, wherein traditional Navajo religious practices, ceremonies, or services are being held; provided, however, that this Section shall not be construed to authorize the attendance at or participation in such practice, ceremony, or service by any person not otherwise authorized to do so.

History

CO-74-78, October 5, 1978.

CN-71-77, November 10, 1977.

§ 481. Unlawful assembly

A. Offense. A person commits unlawful assembly if being present at any assembly of five or more other persons that either has or develops the purpose to engage in conduct constituting a riot as defined in 17 N.N.C. § 482, he or she knowingly remains there and refuses to obey an official order to disperse.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 482. Riot

A. Offense. A person commits riot if, with five or more other persons acting together, he or she intentionally, knowingly or recklessly uses force or violence or threatens to use force or violence, if accompanied by immediate power of execution, which disturbs the public peace.

B. Sentence.

1. Any person found guilty of rioting may be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 483. Disorderly conduct

A. Offense. A person commits disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or with knowledge of doing so, or recklessly creating a risk thereof, he or she:

1. Engages in fighting, or provokes a fight in a Public or Private place; or

2. In a public place uses abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person; or

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

4. Makes unreasonable noise in a public place.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CO-74-78, October 5, 1978.

CN-71-77, November 10, 1977.

Annotations

1. Delinquent child

"This Court concludes that [17 N.N.C.] Section 483(B)(5) provides no authority to incarcerate a delinquent child for disorderly conduct [under 9 N.N.C. § 1152(A)(2)]." *In the Matter of N.B. v. Greyeyes*, No. SC-CV-03-08, slip op. at 6, (Nav. Sup. Ct. April 16, 2008).

§ 484. Obstructing a highway or other public thoroughfare

A. Offense. A person commits obstructing a highway or other public thoroughfare when, having no legal privilege to do so, he or she, alone or with other persons, intentionally, knowingly or recklessly interferes with the passage of any highway or public thoroughfare by creating an unreasonable inconvenience or hazard.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 485. False reporting

A. Offense. A person commits false reporting if he or she initiates or

circulates a report of a bombing, fire, offense or other emergency knowing that the report is false or baseless and intending or knowing:

1. That it will cause action of any sort by an official or volunteer agency organized to deal with emergencies; or

2. That it will place a person in fear of imminent serious bodily injury; or

3. That it will prevent or interrupt the occupation of any building, room, place of assembly, public place or means of transportation.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 486. Criminal nuisance

A. Offense. A person commits criminal nuisance if:

1. By conduct either unlawful in itself or unreasonable under all the circumstances, he or she knowingly or recklessly creates or maintains a condition which endangers the safety or health of others; or

2. He or she knowingly conducts or maintains any premises, place or resort where persons gather for purposes of engaging in unlawful conduct.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 487. Abuse of a human corpse

A. Offense. A person commits an offense pursuant to this Section if without legal privilege he or she intentionally or knowingly physically abuses either by damaging or dismembering or by committing sexual penetration or intercourse upon, disinters, removes or carries away, or performs an autopsy not authorized pursuant to 17 N.N.C. § 1853 upon, a human corpse.

B. Sentence. Any person found guilty of abusing a human corpse may be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 488. Public intoxication

A. Offense. A person commits an offense pursuant to this Section if he

or she appears in a public place under the influence of alcohol, marijuana, or controlled substances which use of or possession of is prohibited under 17 N.N.C. § 394, not therapeutically administered, to the degree that he or she is unable to care for his or her own safety.

B. Safety detention. Any person arrested for public intoxication may be held in a detention facility of the Navajo Nation Department of Public Safety for not more than 24 hours after arrest.

C. Sentence.

1. Any person found guilty of public intoxication may be ordered to attend rehabilitative therapy or perform a term of community service not to exceed five days, or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 489. Inhalation of toxic vapors

A. Offense. A person commits an offense pursuant to this Section if he or she inhales the vapors or fumes of paint, gas, glue, or any other toxic product for the purpose of becoming intoxicated.

B. Safety detention. A person arrested for inhalation of toxic vapors may be held in a detention facility of the Navajo Nation Department of Public Safety for not more than 24 hours after arrest.

C. Sentence.

1. Any person found guilty of inhalation of toxic vapors may be ordered to attend rehabilitative therapy, or perform a term of community service not to exceed five days, or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Subchapter 20. Robbery

§ 490. Definitions

The following definitions apply in this Subchapter:

A. "Force" is any physical aggression directed against a person as a means of gaining control of property.

B. "Threat" means a verbal or physical menace of imminent physical harm to a person.

C. "Dangerous instrument" is defined in 17 N.N.C. § 209 (E).

D. "Deadly weapon" is defined in 17 N.N.C. § 209 (F).

E. "Property" is defined in 17 N.N.C. § 209 (T).

F. "In the course of committing" means all the defendant's acts beginning with the initiation and extending through the flight from a robbery.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 491. Robbery

A. Offense. A person commits robbery if in the course of committing theft, he or she threatens or uses immediate force against any person with intent either to coerce surrender of property or to forestall resistance to his or her taking or retaining of property.

B. Sentence.

1. Any person found guilty of robbery may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 492. Armed robbery

A. Offense. A person commits armed robbery if in the course of committing robbery as defined in 17 N.N.C. § 491, he or she or an accomplice:

1. Is armed with a deadly weapon; or
2. Uses or threatens to use a deadly weapon or dangerous instrument.

B. Sentence. Any person found guilty of armed robbery may be sentenced to imprisonment for a term not to exceed 365 days and to pay a fine not to exceed five thousand dollars (\$5,000).

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CO-74-78, October 5, 1978.

CN-71-77, November 10, 1977.

Subchapter 21. Fish and Wildlife Violations

§ 500. Definitions

The following definitions are applicable to this Subchapter:

A. "Taking" means the hunting, capturing, killing in any manner or the attempt to hunt, capture or kill in any manner, any game animal and quadruped, game bird and fowl, or game fish herein defined.

B. "Game fish". The following are game fish:

1. All of the family Salmonidae (trout);
2. All of the family Esocidae (pike);
3. All of the family Ictaluridae (catfish);
4. All introduced species of the family Serranidae (sea bass and white bass);
5. All of the family Centrarchidae (sunfish, crappie and bass);
6. All of the family Percidae (walleye, pike and perch);
7. All introduced species of the family Pomadasyidae (sargo); and
8. All introduced species of the family Sciaenidae (corvina, barirdiella and redfish).

C. "Game bird". The following are game birds:

1. All of the family Anatidae (waterfowl);
2. All of the family Tetraonidae (grouse and ptarmigans);
3. All of the family Phasianidae (quail, partridges and pheasants);
4. All of the family Meleagridae (wild turkeys) except for the domestic strains of turkeys;
5. All of the family Scolopacidae (shorebirds, snipe, sandpipers and curlews); and
6. All of the family Columbidae (wild pigeons and doves), except for the domestic strains of pigeons.

D. "Game animals". The following mammals are game animals:

1. All of the family Tayassuidae (javelina);
2. All of the family Antilocapridae (American pronghorn);
3. All of the family Cervidae (elk and deer);
4. All of the family Ursidae (bear);
5. All of the species concolor (cougar) of the genus Felis and family Felidae; and
6. All of the genus Ovis (bighorn sheep) except for the domestic species of sheep.

E. "Songbirds". The following species and varieties of birds are songbirds: Any songbird, or birds whose principal food consists of insects, comprising all the species and varieties of birds, represented by the several families of bluebirds, including the western and mountain bluebirds; also bobolinks, catbirds, chickadees, cuckoos, which includes the chaparral bird or roadrunner (*geococcyx novo mexicanus*), flickers, flycatchers, grosbeaks, hummingbirds, kinglets, martins, meadowlarks, nighthawks, or bull bats, nuthatches, orioles, robins, shrikes, swallows, swifts, tanagers, titmice, thrushes, vireos, warblers, waxwings, whippoorwills, woodpeckers, wrens, and all other perching birds which feed entirely or chiefly on insects.

F. "Fur-bearing animals". The following mammals are fur-bearing animals:

1. All of the genus *Lynx rufus* (bobcats and lynx);
2. All of the genus *Castor* (beavers);
3. All of the family Procyonidae (raccoons);
4. All of the genus *Vulpes* (red fox, gray fox, swift fox);
5. All of the species *Ondatra zibethica* (muskrat);

6. All of the genus *Mustela* (weasels);
7. All of the genus *Mephitis* (skunks);
8. All of the species *Taxidea taxus* (badgers)
9. All of the family *Dedilphiidae* (opossums).

G. "Small game animals". The following mammals are small game animals:

1. All of the genus *Sciurus* (squirrels)
2. All of the genus *Eutamias* (chipmunks);
3. All of the genus *Lepus* and *Sylvilagus* (rabbits).

H. "Endangered species" means any species of fish or wildlife whose prospects of survival or recruitment within the Navajo Nation are in jeopardy or are likely within the foreseeable future to become so, due to any of the following factors:

1. The present or threatened destruction, modification or curtailment of its habitat;
2. Overutilization for scientific, commercial or sporting purposes;
3. The effect of disease or predation;
4. Other natural or man-made factors affecting its prospects of survival or recruitment within the Navajo Nation; or
5. Any combination of the foregoing factors. The term may also include any species or subspecies of fish or wildlife appearing on the United States list of endangered native and foreign fish and wildlife as set forth in Section 4 of the Endangered Species Act of 1973 ¹ as endangered or threatened species provided that the Resources Committee of the Navajo Nation Council adopts such lists in whole or in part.

History

CN-71-77, November 10, 1977.

§ 501. Unlawful taking of fish or game

A. Offense. A person commits unlawful taking of fish or game if he or she takes any game fish, game bird or game animal, and:

1. Such taking occurs in a location not permitted by law or regulations; or
2. The person taking such game fish, game bird or game animal is without a permit or with an improper permit; or
3. Such taking occurs during a time of day not permitted by law or

regulation; or

4. Such taking occurs in a manner not permitted by law or regulations; or

5. Such taking is in excess of the permitted number; or

6. Such taking occurs out of season.

B. Sentence. Any person found guilty of unlawful taking of fish or game may be sentenced as follows:

1. For the unlawful taking of game fish, a person may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).

2. For the unlawful taking of game birds, a person may be ordered to pay a fine not to exceed two thousand dollars (\$2,000).

3. For the unlawful taking of game animals, a person may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 502. Unlawful possession of fish or game

A. Offense. A person commits an offense pursuant to this Section if without lawful authority he or she possesses, trades or barter, offers for sale, sells, offers to purchase or purchases within the territorial jurisdiction of the Navajo Nation and the Navajo Nation Courts, all or any part of any game animal, game bird or game fish taken within said jurisdiction.

B. Sentence. Any person found guilty of unlawful possession of fish or game may be sentenced as follows:

1. For the unlawful possession of game fish a person may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).

2. For the unlawful possession of game birds a person may be ordered to pay a fine not to exceed two thousand dollars (\$2,000).

3. For the unlawful possession of game animals a person may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 503. Unlawful taking of songbirds

A. Offense. A person commits an offense pursuant to this Section if without lawful authority he or she takes any songbird, or bird whose principal food consists of insects.

B. Sentence. Any person found guilty of unlawful taking of songbirds be sentenced to imprisonment for a term not to exceed 30 days, or may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).

C. The Director of the Fish and Wildlife Department of the Navajo Nation shall assist any person in securing permits from the Secretary of the Interior for the taking and possession of songbirds. Applications shall be processed without charge to any person for the following purposes:

1. Indian religious and ceremonial purposes;
2. Scientific purposes in accordance with the rules and regulations of the Resources Committee of the Navajo Nation Council.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 504. Unlawful taking or possession of fur-bearing animals

A. Offense. A person commits an offense pursuant to this Section if without lawful authority he or she takes any fur-bearing animals.

B. Sentence. Any person found guilty of unlawful taking or possession of fur-bearing animals may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).

C. The Director of the Fish and Wildlife Department of the Navajo Nation may issue permits to allow any person to take or possess any fur-bearing animal protected by this Section. Permits shall be granted upon application and without charge for the following purposes:

1. Indian religious and ceremonial purposes;
2. Scientific purposes in accordance with the rules and regulations of the Resources Committee of the Navajo Nation Council.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 505. Unlawful taking or possession of Bald or Golden Eagles

A. Offense. A person commits an offense pursuant to this Section if without lawful authority he or she takes or possesses any Bald or Golden Eagles.

B. Sentence. Any person found guilty of unlawful taking or possession of Bald or Golden Eagles may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 506. Unlawful taking and possession of hawks, vultures and owls

A. A person commits an offense pursuant to this Section if without lawful authority he or she takes or possesses any bird of the order falconiformes, comprising all of the species and varieties of birds represented by the several families of vultures and hawks, and all of the order strigiformes, comprising all of the species and varieties of owls.

B. Sentence. Any person found guilty of unlawful taking or possession of hawks, vultures, or owls may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

C. The Director of the Fish and Wildlife Department of the Navajo Nation shall assist any person in securing permits from the Secretary of the Interior for the taking and possession of any bird protected by this Section. Applications shall be processed without charge to any person for the following purposes:

1. Indian religious and ceremonial purposes;
2. Scientific purposes in accordance with the rules and regulations of the Resources Committee of the Navajo Nation Council.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 507. Endangered species

A. On the basis of investigations concerning wildlife, and other available scientific and commercial data, and after consultation with wildlife agencies in surrounding states, appropriate federal agencies, and other interested persons and organizations, not later than one year after the effective date of this criminal code, the Resources Committee of the Navajo

Nation Council shall by regulation develop a list of those species and subspecies of wildlife indigenous to the Navajo Nation which are determined to be endangered within the Navajo Nation giving their common and scientific names by species and subspecies.

B. The Director of the Fish and Wildlife Department shall conduct a review of the Navajo Nation list of endangered species biennially, commencing within two years of the effective date of this criminal code, and may present to the Resources Committee of the Navajo Nation Council recommendations for appropriate additions to or deletions from the list.

C. Except as otherwise provided in this criminal code, it is unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship any species or subspecies of wildlife appearing on any of the following lists:

1. The list of wildlife indigenous to the Navajo Nation determined to be endangered within the Navajo Nation as set forth by regulations of the Resources Committee of the Navajo Nation Council.

2. The United States lists of endangered native and foreign fish and wildlife, as set forth in Section 4 of the Endangered Species Act of 1973 ¹ as endangered or threatened species, but only to the extent that such lists are adopted for this purpose by regulations of the Resources Committee of the Navajo Nation Council.

D. Any species or subspecies of wildlife appearing on any of the foregoing lists, transported into the Navajo Nation from a state of the United States and destined for a point beyond the Navajo Nation may be transported across the Navajo Nation without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of a state of the United States or otherwise in accordance with the laws of a state of the United States.

E. Sentence. Any person found guilty of unlawful taking of endangered species may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 508. Unlawful taking and possession of small game animals

A. Offense. A person commits an offense pursuant to this Section if without lawful authority he or she takes any small game animals.

B. Sentence. Any person found guilty of unlawful taking or possession of small game animals may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).

C. The Director of the Fish and Wildlife Department of the Navajo Nation may issue permits to allow any person to take or possess any small game animal protected by this Section. Permits shall be granted upon application and without charge for the following purposes:

1. Indian religious and ceremonial purposes;
2. Scientific purposes in accordance with the rules and regulations of the Resources Committee of the Navajo Nation Council.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 509. Destruction of posted signs or structures

A. Offense. A person commits an offense pursuant to this Section if he or she destroys, attempts to destroy, or defaces any sign or marker posted or any structure designed for the purpose of regulating and managing any animal, fish or fowl protected by this title.

B. Sentence. Any person found guilty of destruction of posted signs or structures may be ordered to pay a fine not to exceed one hundred dollars (\$100.00).

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

§ 510. Enforcement of fish and wildlife laws

A. The Director of the Fish and Wildlife Department, each Wildlife Enforcement Officer, each Navajo Nation Ranger and each member of the Navajo Division of Law Enforcement commissioned shall enforce the provisions of this Title and shall:

1. Seize any game or fish held in violation of this Chapter;
2. With or without warrant, arrest any person whom he or she knows to be guilty of a violation of this Chapter; and
3. Open, enter and examine all camps, wagons, cars, tents, packs, boxes, barrels and packages where he or she has reason to believe any game or fish taken or held in violation of this Chapter is to be found, and seize it.

B. Any warrant for the arrest of a person shall be issued upon sworn complaint, the same as in other criminal cases, and any search warrant shall

issue upon a written showing of probable cause supported by oath or affirmation, describing the places to be searched or the papers or things to be seized.

C. Wildlife Enforcement Officers may, under the direction of the Fish and Wildlife Department of the Navajo Nation and the Director establish from time to time, as needed for the proper functioning of the Fish and Wildlife Department, checking stations at points along established roads.

History

CN-71-77, November 10, 1977.

§ 511. Forfeiture

Any person found guilty of an offense pursuant to this Subchapter shall forfeit any fish or game as may be found in his or her possession to the court for the use of any Indian institution.

History

CN-71-77, November 10, 1977.

§ 512. Authority to establish fees and regulations

The Resources Committee of the Navajo Nation Council shall have the authority to establish fees and regulations for hunting and fishing activities.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

Subchapter 22. Forests and Woodlands Violations

§ 520. Definitions

The following definitions are applicable to this Subchapter:

A. "Harvest" means to cut, take, damage, remove, or transport any living or dead tree or product thereof, or any attempt to commit such act;

B. "Valid permit" means a tree cutting, forest products use or transportation permit issued and signed by an authorized Forest Officer, on which there is no evidence of tampering, mutilation or other such acts that may change the permit.

C. "Authorized contract" or "authorized agreement" means an existing contract or agreement which meets the following conditions:

1. Procedures for obtaining contracts and agreements as defined by

the Code of Federal Regulations, Title 25, Part 163: General Forest Regulations, have been followed and approved;

2. The contract or agreement has been reviewed and approved by the Resources Committee of the Navajo Nation Council.

D. "Timber harvest standards" means a body of guidelines, recommended by the Navajo Forest Manager and approved by the Resources Committee of the Navajo Nation Council, which governs the harvest of forest products under contracts and agreements;

E. "Forest road" means a road wholly or partly within or adjacent to and serving a part of the Navajo forests or woodlands;

F. "Forest trail" means a trail wholly or partly within or adjacent to and serving a part of the Navajo forests or woodlands;

G. "Forest officer" means an employee of the Navajo Forestry Department or Bureau of Indian Affairs Branch of Forestry;

H. "Navajo forest" includes all lands covered with ponderosa pine, Douglas fir, aspen, corkbark fir, Colorado blue spruce, or Engelmann spruce in some combination which together comprises a crown closure of greater than seven percent (7%). Meadows and openings within these lands are also considered within the forest;

I. "Navajo woodland" includes all lands covered with oak, piñon, and/or juniper in some combination which together comprises a crown closure of greater than seven percent (7%). Meadows and openings surrounded by these lands are also considered within the woodland;

J. "Person" means any natural person, corporation, company, partnership, trust, firm, or association of persons;

K. "Unauthorized livestock" means any cattle, sheep, goat, hog, or equine which is not authorized by permit to be upon the land on which the livestock is located; provided, that non-commercial pack and saddle stock used by recreationists, travelers, and other forest and woodland users for occasional trips are exempt.

L. "Forest product" means any tree or shrub, in whole or in part, dead or alive, including but not limited to the stem, branches, and leaves, which was produced on the Navajo forests or woodlands.

History

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

§ 521. Resisting or obstructing a forest officer

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly obstructs, impairs, hinders or resists any

forest officer or Navajo Nation Ranger engaged in the lawful exercise of his or her official duties.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

CN-71-77, November 10, 1977.

§ 522. Damage to geologic and man-made improvements on Navajo forests or woodlands

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally, recklessly, or negligently:

1. Mutilates, defaces, removes, disturbs, injures or destroys any geologic feature or formation.

2. Destroys, injures, defaces, or removes any sign, marker, post, container, table, fireplace, or other property placed in Navajo forests or woodlands for management purposes.

B. Sentence. Any person found guilty of violating the provisions of this Section may be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500).

C. Restitution. The court, in addition to or in lieu of the sentence, may require the offender to pay the Navajo Nation for the actual damages or restoration costs of the injured property.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

§ 523. Fire violations

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally, recklessly or negligently:

1. Throws or places any burning, glowing or ignited substance within Navajo forests or woodlands which may start a fire;

2. Causes timber, trees, brush, slash or grass to burn, except as authorized by permit issued by BIA Forestry or their delegated agency;

3. Leaves a fire within Navajo forests or woodlands without completely extinguishing it;

4. Allows a fire to get out of control within Navajo forests or woodlands;

5. Within Navajo forests or woodlands, builds a campfire in a dangerous place, or during windy weather without confining it;

6. Operates equipment within the Navajo forest without approved fire safety and spark arresting devices.

B. Sentence.

1. Any person found guilty of violating the provisions of this Section may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan

sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

C. Restitution. The court, in addition to or in lieu of the sentence, may require the offender to pay the Navajo Nation the full cost of suppression of the fire and/or the fair market value of the timber and improvements destroyed or damaged as a result of the fire.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

§ 524. [Reserved]

History

Note. CMY-27-06, May 12, 2006, the Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006, deleted previous § 524, Grazing livestock on withdrawn forest lands, adopted by CJA-08-00, January 27, 2000; CN-83-85, November 1, 1985; and CD-75-82, December 14, 1982.

§ 525. Unauthorized harvesting of timber or forest product

A. Offense. A person commits an offense pursuant to this Section if, after approval of regulations, he or she intentionally or knowingly:

1. Cuts, kills, destroys, chops, boxes, injures or otherwise damages, or harvests any timber, tree or other forest product, except as authorized pursuant to valid permit, approved contract, or Tribal regulation;

2. Harvests any tree pursuant to a valid permit or approved contract before a forest officer has marked it or has otherwise designated it for harvest;

3. Removes any timber or other forest product cut pursuant to a valid permit or approved contract, except to a location designated for scaling, or removes any timber or forest product from a location designated for scaling before it has been scaled, measured, counted, or otherwise inventoried by a forest officer;

4. Stamps, marks with paint, or otherwise identifies any tree or other forest product in a manner similar to that employed by a forest officer to mark or designate a tree or forest product for harvest or removal;

5. Fails to comply with permit requirements or timber harvest standards;

6. Sells or trades any forest product without a valid permit authorizing the commercial sale of the product.

B. Sentence.

1. Any person found guilty of violating the provisions of this Section may be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

C. Restitution. The court, in addition to or in lieu of the penalty, may require the offender to pay the Navajo Nation the fair market value of the damaged property and/or restoration costs.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

§ 526. Unauthorized occupancy and use of Navajo forest lands

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly:

1. Constructs or maintains any road, trail, structure, fence, enclosure, or other improvement upon Navajo forests or woodlands without proper authorization;

2. Abandons a motor vehicle, animal or personal property within Navajo forests or woodlands.

B. Sentence.

1. Any person found guilty of violating the provisions of this Section may be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

C. Removal costs. The court, in addition to or in lieu of the sentence, may order the offender to remove the unauthorized improvements or to pay the Navajo Nation the full costs of removal.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

§ 527. Unauthorized use of motor vehicles

A. Offense. A person commits an offense pursuant to this Section if he

or she intentionally or knowingly:

1. Fails to stop a motor vehicle when directed to do so by a forest officer;

2. Blocks, restricts, or otherwise interferes with the use of a road or trail within Navajo forests or woodlands;

3. Operates any motor vehicle off of established roads in a manner which damages or unreasonably disturbs Navajo forests or woodlands or any Navajo vegetative resource.

B. Sentence.

1. Any person found guilty of violating the provisions of this Section may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

C. Restitution. The court, in addition to or in lieu of the sentence, may require the offender to pay the Navajo Nation the full cost of restoration of the damaged resource.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

§ 528. Special closures or use restrictions

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly violates any order issued by the Navajo Division of Resources temporarily closing or restricting the use of Navajo forests or woodlands for the following reasons:

1. Smoking of cigarettes, pipes, cigars, or any other material in areas designated by the order;

2. Use of firearms and/or fireworks in the designated areas;

3. Use of chainsaws, tractors, trucks, and other equipment during designated hours and/or in designated areas;

4. Building, maintaining, attending, or using a fire, in the designated areas;

5. Utilizing or otherwise going upon Navajo forests or woodlands closed by order.

B. Sentence. Any person found guilty of violating the provisions of this Section may be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500).

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

§ 529. Enforcement of Navajo forests and woodlands laws and regulations

The Navajo Nation Forest Manager, each commissioned forest officer, each Navajo Nation Ranger and each commissioned officer of the Navajo Division of Public Safety are authorized and directed to enforce the provisions of this Subchapter.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

Subchapter 23. Curfew Violations

§ 530. Definitions

The following definitions apply in this Subchapter:

A. "Abroad" shall mean when a child is in any place in or out-of-doors other than his/her usual place of abode. However, no child shall be considered "abroad" in any of the following circumstances:

1. When accompanied by a parent or guardian; or
2. When returning home without delay or loitering from a community, school or other activity attended with permission or his/her parent or guardian; or
3. During an emergency.

B. "Child" shall mean any person who has not reached his/her eighteenth birthday.

C. "Curfew hours" shall mean for a child who has not reached his/her eighteenth birthday, between the hours of 10:00 p.m.—6:00 a.m. Sunday through Thursday, and 12:00 a.m.—6:00 a.m. Friday and Saturday.

D. "Emergency" shall mean an unforeseen circumstance or a combination of circumstances or the resulting state thereof that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life, or damage to or loss of property.

E. "Establishment" shall mean any place or business to which the public is invited, including but not limited to, any place of amusement, entertainment or traditional ceremony.

F. "Guardian" shall mean a person who is:

1. Assigned by a court of law, other than a parent, having the duty and authority to provide care and control of a child; or
2. At least 18 years of age and authorized by a parent to have the care and custody of a child.

G. "Operator" shall mean any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

H. "Parent" shall mean a person who is a natural or adoptive parent but does not include any person whose parental rights have been terminated.

I. "Public place" shall mean any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

J. "Remain" shall mean to:

1. Linger or stay; or

2. Fail to leave the premises when requested to do so by a police officer or the owner, operator, or other persons in control of the premises.

K. "Serious bodily injury" shall mean bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

History

CO-97-95, October 20, 1995.

§ 531. Curfew

A. A parent or guardian of a child commits an offense whenever:

1. The child is found or remains abroad in any public place or on the premises of any establishment within the territorial jurisdiction of the Navajo Nation during curfew hours as defined by Section 530 of this Subchapter; or

2. The parent or guardian fails or refuses to take such child into custody after such demand is made upon him/her by a law enforcement officer who has taken custody of said child for committing an offense pursuant to Section 531 of this Subchapter.

B. A child, who has not reached his/her eighteenth birthday, commits an offense if he/she is found or remains abroad in any public place or on the premises of any establishment within the territorial jurisdiction of the Navajo Nation during curfew hours as defined by Section 530(C) of this Subchapter.

C. The owner, operator or any employee of an establishment commits an offense whenever a child is found or remains abroad upon the premises of the establishment during curfew hours as defined by Section 530(C) of this Subchapter.

D. Sentence.

1. Any Indian, other than a child who is found guilty of committing an offense under this Subchapter may be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both.

2. Any Indian child who commits an offense under Section 531(B) or (C) of this Subchapter shall be deemed to have committed a delinquent act and may be deemed a delinquent child pursuant to 9 N.N.C. § 1001 *et seq.*

3. Any non-Indian child or non-Indian parent or guardian of a child who commits an offense under Section 531 or this Subchapter may be excluded from the territorial jurisdiction of the Navajo Nation pursuant to 17 N.N.C. § 1901 *et seq.*, or be ordered to pay a civil penalty not to

exceed five hundred dollars (\$500.00), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CO-97-95, October 20, 2000.

Annotations

1. Children's Code

"Thus, we hold the juvenile was illegally detained when a petition is filed 31 days after a referral where the Children's Code requires dismissal with prejudice if it is not filed within 30 days from the date of referral." *In the Matter of L.R. v. Greyeyes*, No. SC-CV-39-07, slip op. at 4 (Nav. Sup. Ct. November 21, 2007).

"Section 1113(A)(2) is meant to be applied hand-in-hand with Section 1113(A)(1). Thus, by failing to meet the timeline of Section 1113(A)(1), the Juvenile Presenting Officer also failed to meet Section 1113(A)(2). Thus, the Court holds a finding of delinquency should be vacated where an untimely filing of a petition results in the illegal detention of a juvenile." *In the Matter of L.R. v. Greyeyes*, No. SC-CV-39-07, slip op. at 6 (Nav. Sup. Ct. November 21, 2007).

§ 532. Damages to or destruction of property by child; parents and guardian liable; costs and attorney's fees; provisions for damages and restitution

A. Notwithstanding the provisions of 9 N.N.C. § 1120(A), any person may recover damages, pursuant to applicable laws, in a civil action in a court or tribunal of competent jurisdiction, from the parent or guardian or a child upon proof by clear and convincing evidence that the child maliciously or willfully injured a person(s) or damaged or destroyed property, real or personal, belonging to the person bringing the action.

B. Recovery of damages under this Section is limited to actual damages proved in the action, court costs, and, in the discretion of the court, reasonable attorney's fees to be fixed by the court or tribunal.

C. Nothing contained in this Section limits the discretion of the court to issue an order requiring damages or restitution to be paid by a child who has been found to be within the provisions of the Navajo Nation Children's Code.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CO-97-95, October 20, 1995.

Subchapter 25. Unauthorized Recording

§ 601. Short title

17 N.N.C. §§ 601-608 may be cited as the Navajo Nation Unauthorized Recording Act of 2009.

History

CO-34-09, October 21, 2009. Navajo Nation Unauthorized Recording Act of 2009.

§ 602. Definitions

As used in the Navajo Nation Unauthorized Recording Act:

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 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 the 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.

I. "Transfer" means to duplicate a recording from one tangible medium or expression to another recording.

History

CO-34-09, October 21, 2009. Navajo Nation Unauthorized Recording Act of 2009.

§ 603. Unauthorized recording

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 Navajo Nation for commercial advantage or private financial gain a recording with the knowledge that the sounds have 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. Sentence. Any person violating the provisions of this Section shall be sentenced to imprisonment for a term not to exceed 365 days, or ordered to pay a fine not to exceed \$5,000, or both.

History

CO-34-09, October 21, 2009. Navajo Nation Unauthorized Recording Act of 2009.

§ 604. Mislabeling of recordings

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. Sentence. Any person violating the provisions of this Section shall be sentenced to imprisonment for a term not to exceed 365 days, or ordered to pay a fine not to exceed \$5,000, or both.

History

CO-34-09, October 21, 2009. Navajo Nation Unauthorized Recording Act of 2009.

§ 605. 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. Sentence. Any person violating the provisions of this Section shall be sentenced to imprisonment for a term not to exceed 365 days, or ordered to pay a fine not to exceed \$5,000, or both.

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.

History

CO-34-09, October 21, 2009. Navajo Nation Unauthorized Recording Act of 2009.

§ 606. Construction

Nothing in the Unauthorized Recording Act shall enlarge or diminish the rights of parties in private litigation.

History

CO-34-09, October 21, 2009. Navajo Nation Unauthorized Recording Act of 2009.

§ 607. Exemptions

The provisions of the Navajo Nation Unauthorized Recording Act 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 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 or educational use and who does not derive any commercial advantage or private financial gain from the transfer; or

D. Any recording of traditional Navajo ceremonial songs that has been recorded with the consent of a Navajo traditional religious practitioner for traditional religious purposes and not for entertainment purposes; or

E. Any recording of a song within the public domain.

History

CO-34-09, October 21, 2009. Navajo Nation Unauthorized Recording Act of 2009.

§ 608. Forfeitures; property subject

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 the Navajo Nation Unauthorized Recording Act;

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, the Navajo Nation Unauthorized Recording Act;

C. All books, business records, materials and other data that are used, or intended for use, in violation of the Navajo Nation Unauthorized Recording Act; and

D. Money or negotiable instruments that are the fruit or instrumentality of the crime.

History

CO-34-09, October 21, 2009. Navajo Nation Unauthorized Recording Act of 2009.

Chapter 5. Procedures

Subchapter 1. General Provisions

§ 1801. Complaints generally

No complaint filed in any Court of the Navajo Nation shall be valid unless it shall bear the signature of a prosecutor employed by the Navajo Office of the Prosecutor.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJA-1-59, January 6, 1959.

CO-69-58, October 16, 1958.

Annotations

1. Special prosecutor

"The special prosecutor may execute a criminal complaint, despite the provisions of 17 N.N.C. § 1801, regarding who may sign a complaint." *Navajo Nation v. MacDonald, Jr.*, 7 Nav. R. 1, 5 (Nav. Sup. Ct. 1992).

§ 1802. Complaints of traffic violations

A. In cases involving traffic violations, the arresting officer shall issue to the defendant a traffic ticket (uniform traffic citation) and such ticket shall serve as a valid complaint in the courts of the Navajo Nation, upon being properly filed. No other complaint need be filed in such case.

B. A traffic ticket signed by the arresting officer acting in his or her official capacity, and properly filed, is a valid complaint. The signature on a traffic ticket of the arresting officer need not be witnessed, notwithstanding the provision of 17 N.N.C. § 1801 that all complaints be witnessed.

History

CJA-17-72, January 27, 1972.

ACJN-91-68, June 3, 1968.

§ 1803. Warrants to apprehend

Every judge of a Court of the Navajo Nation shall have the authority to issue warrants to apprehend, such warrants to issue at the discretion of the court only after a written complaint shall have been filed, bearing the signature of the prosecutor. Service of such warrants shall be made by a duly qualified officer of the Navajo Nation Department of Public Safety. No warrant to apprehend shall be valid unless it shall bear the signature of a duly qualified judge of the Court of the Navajo Nation.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJA-1-59, January 6, 1959.

§ 1804. Arrests

No member of the Navajo police shall arrest any person for any offense defined by Chapter 3 of this title or by federal law, except when such offense shall occur in the presence of the arresting officer, or he or she shall have probable cause that the person arrested has committed an offense or the officer shall have a warrant commanding him or her to apprehend such person.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJA-1-59, January 6, 1959.

§ 1805. Detention; commitments

No person shall be detained, jailed or imprisoned under any law of the Navajo Nation for a longer period than 36 hours, unless there be issued a commitment bearing the signature of a duly qualified judge of the Court of the Navajo Nation; provided, however, that an person arrested on a Friday, Saturday, Sunday, or a day before a holiday, who, having been given an opportunity within 36 hours after arrest to be released on bail does not provide bail, may be held in custody pending commitment for a reasonable additional period not to exceed eight hours following the opening of court on the next day it is in session. There shall be issued for each person held for trial, a temporary commitment and, for each person held after sentence, a final commitment on the prescribed forms.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CF-18-58, February 18, 1958.

§ 1806. [Repealed]

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

§ 1807. Bail

A. Every person arrested for an alleged offense against the Navajo Nation shall, within a period not to exceed 18 hours from the time of commitment, be given an opportunity to be released on bail.

B. Bail may be by bail agreement, as defined herein, by cash bond, as provided herein, or by recognizance, as provided in 17 N.N.C. § 1816.

History

CMY-36-70, May 14, 1970.

Annotations

1. Presumption for release

"The Court hereby holds that the plain language of 17 N.N.C. § 1807 and Rule 15(a) of the Criminal Rules do support a 'legal presumption' for release of a defendant by personal recognizance unless the government, who has filed the complaint(s) against an individual, objects and a judge makes 'certain findings' on the record against release." *Wood v. Window Rock District Court*, No. SC-CV-20-09, slip op. at 6 (Nav. Sup. Ct. July 1, 2009).

"With a legal presumption for release by recognizance, the burden is upon the Navajo Nation to prove its denial is justified by clear and convincing evidence. See *Apachito v. Navajo Nation*, 8 Nav. R. 339, 345 (Nav. Sup. Ct. 2003) (adopting the 'clear and convincing evidence' standard for pretrial detention proceedings.) For the Navajo Nation to object and for a judge to enter certain findings, the Navajo Nation prosecutor shall be present at arraignment. The non-appearance of a prosecutor shall be understood to mean that the prosecutor has no objections." *Wood v. Window Rock District Court*, No. SC-CV-20-09, slip op. at 6 (Nav. Sup. Ct. July 1, 2009).

"As there were no reasons given at arraignment to deny Mr. Wood's release, the judge may not now use a highly-set bail or unilaterally make findings about a defendant as a substitute for finding facts at arraignment. The purpose of bail, as stated previously, is to ensure a defendant's appearance at trial, and the Court notes that there are alternative methods of securing his appearance such as third-party release. The judge's denial of release under these circumstances is also an abuse of a judge's discretion, contrary to 17 N.N.C. § 1807(A), 1807(B), Rule 15 and the legal presumption for release." *Wood v. Window Rock District Court*, No. SC-CV-20-09, slip op. at 8 (Nav. Sup. Ct. July 1, 2009).

§ 1808. Bail agreement

One or two reliable members of the Navajo Nation may execute an agreement in compliance with a form approved by the Chief Justice of the Navajo Nation Supreme Court as provided for this purpose. The agreement shall prescribe civil penalties, in an amount which shall not exceed the sum of five thousand dollars (\$5,000) per signatory, which shall become immediately due and owing to the Navajo Nation upon the accused's unexcused failure to appear at the time for hearing or trial. The bail agreement shall be executed before and endorsed by a judge or clerk of District Court of the Navajo Nation, or if the court is not in session, before and endorsed by a Navajo police officer authorized to admit to bail by the Director of the Department of Law Enforcement. Bail agreements executed by an authorized officer shall be promptly filed with the Clerk of the District Court of the Navajo Nation of the Judicial District where the complaint against the bailed person is filed.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CMY-36-70, May 14, 1970.

§ 1809. Cash bail bonds

A. Each of the judges of the District Court of the Navajo Nation are authorized to establish, in each case, the sum to be required as cash bail bond, provided that in no case shall the bond required exceed the maximum fine specified by applicable law for the offense for which the accused has been charged. A majority of the judges of the District Court of the Navajo Nation, with the concurrence of the Chief Justice of the Supreme Court, are authorized to establish, promulgate, and amend a schedule stating the amount of the cash bond required for the various offenses. Officers of the Navajo Nation Police

Department authorized by the Director of the Department of Law Enforcement to admit persons to bail shall, at times when they are so authorized, admit any person to bail who deposits with the officer the amount of cash required on the schedule as a bond for the offense with which the person is charged.

B. Any police officers clerk of the court, or judge who admits any person to bail upon their payment of the amount of the cash bail deposit required, shall immediately thereupon complete a serially numbered cash bail receipt and shall distribute one copy thereof to the person admitted to bail, and shall retain one copy thereof himself or herself. One copy shall be distributed to the court, or to the Police Department, if a court clerk or a judge admits a person to bail. One copy shall also be distributed to the Controller of the Navajo Nation. Copies of the receipt to be distributed to the court and to the Controller, and the cash deposit shall be delivered either immediately to the clerk of the court or if the bail deposit be accepted by a police officer, immediately on the first following day the court is in session. Voided receipts shall be likewise distributed.

C. The clerk of the court shall transfer all money received as a bail bond deposit, with the Controller's copy of the receipts, to the Controller of the Navajo Nation, at least weekly. The Controller shall hold all such monies in a special account.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CMY-36-70, May 14, 1970.

§ 1810. Forfeiture; application of deposit to fines; refund

The cash deposit for bail of any accused who fails to meet any conditions of bail shall be forfeited, unless a judge of the District Court, for good cause shown, orders otherwise. Cash bail deposits of any person who pleads guilty, or is found guilty upon trial, shall be applied toward payment of any fine imposed, and any deposit in excess thereof shall be refunded. If the accused is found not guilty, or the case is dismissed, or the bail deposit has not been fully applied to any fine imposed, the court, by the clerk, shall issue a warrant to the Controller, stating the amount of the refund due, which the Controller shall pay upon presentation. The court clerk shall transmit a copy of said warrant to the Controller's Office. The warrant shall be void one year after the date of issuance, if not presented.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CMY-36-70, May 14, 1970.

§ 1811. Disposition of unclaimed or forfeited bail

No forfeiture of bail may be set aside at any time later than 15 days,

including Sundays and holidays, following the date of such forfeiture. The clerk of the court shall, upon the expiration of such time, transmit notice of such forfeiture to the Controller. The Controller shall redeposit all monies deposited as bail which are forfeited or unclaimed within a year of the date of issuance of a warrant for refund to the credit of the General Fund. All or part of cash bail deposits applied toward any fine levied shall be redeposited in accounts wherein fine monies are deposited.

History

CMY-36-70, May 14, 1970.

§ 1812. Conditions of bond; refusal to release

A. The judges and Navajo police officers authorized to admit persons to bail are authorized to refuse to admit persons to bail, in any one of these following circumstances:

1. When the judge or officer has reason to believe that the person is unable to care for his or her personal safety or will be a danger to the public.

2. When the judge or officer has reason to believe that the person will pose a danger to any other person or to the community.

3. When the judge or officer has reason to believe that the person will leave the lands subject to the jurisdiction of the Navajo Nation and fail to appear.

4. When the person charged has allegedly done or committed acts as part of the same design or transaction upon which the alleged offense against the Navajo Nation is charged which would in the officer's or the judge's belief constitute a felonious offense, which shall be for the purposes of this Section, an offense under 18 U.S.C. § 1153.

B. No judge or officer shall be held liable for refusal to admit to bail pursuant to this Section, except upon a finding by the court that there existed no basis for refusal to admit to bail, and upon proof that the refusal to admit to bail was the result of wilful malice.

C. Any officer who refuses to admit a person to bail shall immediately bring such person before a judge of the District Court of the Navajo Nation at the first opportunity to do so. The officer shall thereupon show cause why he or she refused to admit the person to bail. The judge thereupon may order the person held without bail, or admitted to bail. Any such order shall be appealable to the Supreme Court of the Navajo Nation and the Supreme Court shall give any such appeal absolute priority.

History

CMY-36-70, May 14, 1970.

Annotations

1. Refusal to release

"The statute and rules also provide that a judge or officer may refuse to admit a person to bail under certain circumstances, including a reason to believe that the person will fail to appear at subsequent proceedings. See 17 N.N.C. § 1812. Where a 'specific finding' is made that a release by personal recognizance will not reasonably assure the appearance of the defendant at trial, Rule 15(b) of the Criminal Rules provides that a judge may permit release under conditions which will reasonable assure the appearance of the defendant for trial. This rule provides that such conditions may include placement of restrictions during the defendant's period of release, or cash bond, or requiring the return of the defendant to custody after specified hours. Nav. R. Cr. P. 15(b). Furthermore, a judge may deny release or order the defendant to abide by any other conditions where there are reasons, for the record, to believe that the defendant is dangerous to others or will commit a crime. See Nav. R. Cr. P. 15(d) (listing reasons to deny release); *Seaton v. Greyeyes*, No. SC-CV-04-06, slip op. at 3 (Nav. Sup. Ct. March 28, 2006) (examining reasons justifying detention). Furthermore, the mere seriousness of the charge will not justify continued detention. *Id.* at 4. Overall, denial of such release must be made at arraignment upon a motion by the Navajo Nation. Reasons for denial of release must be stated for the record. *Dawes v. Eriacho*, No. SC-CV-09-08 (Nav. Sup. Ct. May 5, 2008) (holding that written reasons to deny a criminal defendant's release were not required and that verbal notification was sufficient). This assures the defendant a meaningful appeal of a lower court's order to this Court pursuant to 17 N.N.C. § 1812(C)." *Wood v. Window Rock District Court*, No. SC-CV-20-09, slip op. at 6-7 (Nav. Sup. Ct. July 1, 2009).

"As there were no reasons given at arraignment to deny Mr. Wood's release, the judge may not now use a highly-set bail or unilaterally make findings about a defendant as a substitute for finding facts at arraignment. The purpose of bail, as stated previously, is to ensure a defendant's appearance at trial, and the Court notes that there are alternative methods of securing his appearance such as third-party release. The judge's denial of release under these circumstances is also an abuse of a judge's discretion, contrary to 17 N.N.C. § 1807(A), 1807(B), Rule 15 and the legal presumption for release." *Wood v. Window Rock District Court*, No. SC-CV-20-09, slip op. at 8 (Nav. Sup. Ct. July 1, 2009).

§ 1813. Conditions of date of appearance

The judges of the District Court of the Navajo Nation are hereby authorized to impose conditions of a date of appearance and such other conditions upon bail as are necessary or proper.

History

CMY-36-70, May 14, 1970.

Annotations

1. Conditions of release

"We recognize that judges have a certain amount of discretion, but discretion

must be exercised within the parameters of the law. Particularly, the discretion given to judges under 17 N.N.C. § 1813 authorizes the imposition of conditions of release that bear a reasonable relationship to insuring defendant's appearance. *McCabe v. Walters*, 5 Nav. R. 43, 48 (Nav. Ct. App. 1985)." *Wood v. Window Rock District Court*, No. SC-CV-20-09, slip op. at 7-8 (Nav. Sup. Ct. July 1, 2009).

"The discretion given to the district court judge under Section 1813 authorizes the imposition of condition on release that bear a reasonable relationship to insuring defendant's appearance. [...] The Court fails to see any nexus between the district court's requirement, that Petitioner be relieved of his duties as Chief Justice, as a condition of release from custody, and how this condition in any way insures Petitioner's appearance at a subsequent hearing." *Chief Justice McCabe v. Hon. Walters*, 5 Nav. R. 43, 48 (Nav. Ct. App. 1985).

2. Review

"Generally, the fact that a criminal defendant is employed is a factor justifying release on personal recognizance, and thus, it was an abuse of discretion to require a criminal defendant to leave his employment as a condition of release, as the Respondent has done in Petitioner's case." *Chief Justice McCabe v. Hon. Walters*, 5 Nav. R. 43, 48 (Nav. Ct. App. 1985).

§ 1814. Notice of date of appearance

Officers admitting persons to bail shall inform them in writing that, if they fail to receive notice of a date of appearance within 15 days, they should inquire of the court or the police as to their hearing date. The judges of the District Courts of the Navajo Nation are authorized to forfeit the bail of any person failing to meet the conditions thereof, and to cause warrants to issue for the return of such person. No person shall, in any single case, be admitted to bail after such person has failed to meet prior bail conditions in the same case.

History

CMY-36-70, May 14, 1970.

§ 1815. Admission of persons to bail

The Director of the Department of Law Enforcement is authorized and directed to authorize officers to admit persons to bail, during those times when the District Court of the Navajo Nation is not in session. The Director of the Department of Law Enforcement is further directed to assure that an officer authorized to admit persons to bail be on duty at each jail facility during said times.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CMY-36-70, May 14, 1970.

§ 1816. Release on recognizance; warrant on failure to appear for trial

Any judge or clerk of the Court of the Navajo Nation, or any Navajo police officer duly authorized to admit to bail, may, in his or her discretion, release any person arrested for an offense on such person's own recognizance. If any Indian so released does not appear for trial at the time and place specified, the judge may issue a warrant to apprehend such person, and thereafter such person shall not be released prior to trial except by written order signed by a judge of the Court of the Navajo Nation.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CF-18-58, February 18, 1958.

§ 1817. [Repealed]

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

§ 1818. Probation

A. The Court of the Navajo Nation may in its discretion suspend any sentence imposed and allow the offender his or her freedom on probation upon his or her signing a pledge of good conduct during the period of the sentence upon the form provided therefor.

B. Any person who shall violate his or her probation pledge shall be required to serve the original sentence.

C. The Courts of the Navajo Nation may establish a program to merge the functions of probation and peace making to promote the rehabilitation of offenders and serve the interest of victims and the program may charge participants reasonable fee or assessment for serious services and expend such funds for probation and peace making functions.

D. Individuals who are convicted of any offense may be sentenced to a term of probation not to exceed two years and individuals convicted of multiple offenses may be sentenced to a term of probation not to exceed five years.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJA-1-59, January 6, 1959.

§ 1819. Parole

A. Any person committed by a Court of the Navajo Nation who shall have

without misconduct served one-half the sentence imposed by such court may be eligible to parole. Parole shall be granted only by a judge of the Court of the Navajo Nation where the prisoner was convicted after hearing of the issue and upon the signing of the form provided therefor. The Court shall file findings of fact and conclusions of law stating its reasons for granting or denying parole.

B. Any person who shall violate any of the provisions of such parole shall be punished by being required to serve the whole of the original sentence.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJA-1-59, January 6, 1959.

Subchapter 3. Coroners; Investigation of Deaths

§ 1851. Appointment of coroners; compensation

The President of the Navajo Nation is authorized to appoint at least one coroner within each police district, and to hold office at the President's pleasure. Coroners shall be paid at a rate established by the Navajo Nation Council and may be reimbursed for actual and necessary expenses, upon presenting proper vouchers to the Controller of the Navajo Nation.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJA-1-59, January 6, 1959.

CS-76-57, September 10, 1957.

§ 1852. Investigation of deaths—Generally

Whenever a coroner is informed that a person on Navajo Nation land has been killed, or has suddenly died under such circumstances as afford reasonable ground to suspect that the death was occasioned by the criminal act or gross negligence of another, the coroner shall go to the place where the body is located and inquire into the cause of death. Unless the coroner is a physician, he or she shall endeavor to have a physician accompany him or her to the place where the body is located.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CS-76-57, September 10, 1957.

§ 1853. Autopsies and exhumations

A. When the coroner determines that the cause of death cannot be determined without an autopsy, the coroner or district prosecutor may petition the district court of the Navajo Nation to order an autopsy be held. If such an autopsy shall require exhumation of the body, such information shall be included in the petition. Hearings on such petitions shall be held on an expedited schedule upon a showing of exigent circumstances derived from medical necessity or the needs of a criminal investigation.

B. The immediate family of the decedent shall be served with a copy of the petition and shall be allowed to file objections, if their identity and whereabouts can be ascertained and their participation is consistent with the requirements of medical necessity or the needs of a criminal investigation. The petitioner must show what reasonable, good faith efforts have been made to locate and serve the decedent's immediate family.

C. The district court may order an autopsy if it finds that:

1. The cause of death cannot be determined without an autopsy;
2. Such determination is critical to a criminal investigation or required by medical necessity;
3. No less invasive means is available for the investigation.

D. After the district court has ordered an autopsy, the coroner may request the United States Public Health Service perform the autopsy, or may engage a private physician or other licensed health care provider to perform such service.

E. If the ordered autopsy requires exhumation of a body, the coroner shall cause the body to be exhumed for examination and reburial after autopsy. The coroner may call upon the Navajo police for assistance in exhumation and reburial.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CS-76-57, September 10, 1957.

§ 1854. Report

A. After inspecting the body and conferring with a physician, if the coroner is not himself or herself a physician, the coroner shall make a written report, in quadruplicate, stating the following facts:

1. The name and census number of the dead person.
2. When and where he or she died, and the circumstances of his or her death.

3. What caused the death.

4. Who caused the death, if caused by the act, whether criminal or not, of another person, or by gross negligence.

5. An inventory of the property other than clothing of ordinary value found on the dead person.

6. If the coroner is not a physician, the name and address the physician he or she consulted.

B. The coroner shall submit all copies of his or her report to the Police Captain of the Navajo police district in which the death occurred. The Captain shall retain one copy and forward the remaining three copies to the Chief of the Navajo police.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CS-76-57, September 10, 1957.

§ 1855. Disposition of property found on body

It shall be the duty of the coroner to take possession of all property except clothing of ordinary value found on the person of anyone whose death he or she is required to investigate, and to turn property over to the District Police Captain with his or her report containing the inventory thereof. The District Police Captain shall deliver such property to the Court of the Navajo Nation after it has served any purpose it may have as evidence in a criminal prosecution arising out of the death, and the Court shall dispose of the same as part of the estate of the deceased or in such other manner as justice may require.

History

CS-76-57, September 10, 1957.

§ 1856. Duty of person discovering body

It shall be the duty of every Navajo police officer upon learning that a person has apparently been killed on Navajo Nation land, or has apparently died on such land because of the criminal act or gross negligence of another, to notify a Navajo coroner of such fact immediately. It shall be the duty of any person other than a police officer making a discovery of a body to notify a Navajo police officer or coroner without delay.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Subchapter 5. Exclusion of Persons from Navajo Nation Land

§ 1901. Exclusionary process

A. The President of the Navajo Nation, or in his or her absence the Vice-President of the Navajo Nation, is empowered to close any or all of the Navajo Nation to nonmembers whenever the presence of such nonmembers would constitute a danger to life or property. The exclusion order may permit certain named individuals (or classes of individuals) to remain and may provide for a procedure whereby individuals or classes of individuals may seek entry or reentry to closed areas. No such closure may continue for more than 30 days without concurrence by the Government Services Committee of the Navajo Nation Council.

B. A nonmember of the Navajo Nation may be excluded from the Navajo Nation after hearing and the entry of an exclusion order, or, in cases involving danger to the public health or safety, pending such a hearing, on order of a District Court Judge of the Navajo Nation. Such interim exclusion of the nonmember from the Navajo Nation shall only be ordered in cases involving the public health and safety and for a period no longer than necessary for an exclusion hearing to be held.

C. An Order of Exclusion may be entered:

1. When the nonmember is accused of conduct, including traffic offenses, within the Navajo Nation which would be punishable under the laws of the Navajo Nation or the United States if committed by a member of the Navajo Nation, and such nonmember either admits such conduct in the exclusion proceeding, or is found by a preponderance of the evidence in the exclusion proceeding to have committed the act in question; or

2. When the nonmember either admits in an exclusion proceeding or is found by a preponderance of the evidence presented in an exclusion proceeding to have engaged in any of the following acts:

a. Unauthorized prospecting, mining, collecting or gathering of or for oil, gas, coal, uranium and other minerals, water, petrified wood, antiquities or artifacts; or

b. Entry into any Navajo home without the consent of the occupants; or

c. Interference with or unauthorized photographing of any Navajo traditional ceremony or other religious ceremony; or

d. Unauthorized trading or peddling; or

e. Recruiting Navajo labor without permission of the Office of Navajo Labor Relations; or

f. Unauthorized entering of an area of the Navajo Nation

closed to nonmembers; or

g. Removal from the Navajo Nation of any member of the Navajo Nation under the age of 18, or under guardianship, except by Order of the Courts of the Navajo Nation or in conjunction with a nonsectarian program administered by the Navajo Nation or the Bureau of Indian Affairs; or

h. Unauthorized timber cutting or plant gathering; or

i. Unauthorized surveying; or

j. Damaging property of any resident of the Navajo Nation or using such property without permission.

k. Violation of any section of the Navajo Nation code providing for exclusion as a remedy for such violation.

D. An exclusion order entered by a Court of the Navajo Nation shall either be for a definite period, or may, under appropriate circumstances, be permanent. A person excluded may petition the Court for modification of an exclusion order at any time.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CF-17-80, February 13, 1980.

CN-60-56, November 2, 1956.

CO-73-78, October 5, 1978.

CJ-7-40, June 5, 1940.

Annotations

1. Non Indian children

"We believe delinquency jurisdiction over non-Indians, as long as detention is not allowed, is civil in nature, and therefore within the jurisdiction of our courts. Our Children's Code, like those of states, classifies juvenile proceedings as civil." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 6 (Nav. Sup. Ct. May 26, 2005).

"We therefore hold that exclusion of a non-Indian child is not an independent proceeding, but is a possible disposition after the facts have been established in a delinquency proceeding." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 9 (Nav. Sup. Ct. May 26, 2005).

"We therefore hold that a non-Indian child must have a dispositional hearing before the court may exclude him or her. As no hearing was held, the family court violated A.P.'s due process rights, and we must bar it from excluding her from the Navajo Nation." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip

op. at 10 (Nav. Sup. Ct. May 26, 2005).

§ 1902. Court jurisdiction

A. The Courts of the Navajo Nation are vested with civil jurisdiction over all persons with respect to exclusion of nonmembers of the Navajo Nation from the Navajo Nation.

B. The Chief Justice of the Navajo Nation with the advice and consent of the Judiciary Committee of the Navajo Nation Council, is empowered to adopt such rules as are deemed appropriate for exclusion proceedings.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CO-73-78, October 5, 1978.

Cross Reference

See generally, Title 7, Navajo Nation Code.

Annotations

1. Non Indian children

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"We therefore hold that a non-Indian child must have a dispositional hearing before the court may exclude him or her. As no hearing was held, the family court violated A.P.'s due process rights, and we must bar it from excluding her from the Navajo Nation." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 10 (Nav. Sup. Ct. May 26, 2005).

Subchapter 7. Extradition

§ 1951. Persons committing crime outside Indian Country—Apprehension on Reservation

Whenever the President of the Navajo Nation is informed and believes that a person has committed a crime outside of Indian Country and is present in Navajo "Indian Country" and using it as an asylum from prosecution by the state, the President of the Navajo Nation may order any Navajo police officer

to apprehend such person and deliver him or her to proper state authorities at the Reservation boundary.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CMY-38-70, May 14, 1970.

CJ-1-56, January 27, 1956.

§ 1952. Hearing; release

If any person being arrested as provided in 17 N.N.C. § 1951 so demands, he or she shall be taken by the arresting police officer to the nearest Court of the Navajo Nation, where the judge shall hold a hearing, and if it appears that there is no probable cause to believe the Indian guilty of the crime with which he or she is charged off the Reservation, or if it appears that the Indian probably will not receive a fair trial in the state court, the judge shall order the Indian released from custody.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJ-1-56, January 27, 1956.

§ 1953. Office of the Prosecutor

The Office of the Prosecutor of the Navajo Nation shall represent the interests of the Navajo Nation at the hearing authorized under Section 1952 of this Title.

History

CAP-9-79, April 18, 1979.

Cross Reference

2 N.N.C. § 1971 *et seq.*

Subchapter 8. Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings

§ 1970. Definitions

In this article, unless the context otherwise requires:

A. "Witness" includes a person whose testimony is desired in any proceeding or investigation by a grand jury or prosecutor or in a criminal action, prosecution or proceeding.

B. "State" includes any territory of the United States and the District of Columbia, or the Navajo Nation.

C. "Summons" includes a subpoena, order or other notice requiring the appearance of a witness.

History

CS-60-89, September 15, 1989.

§ 1971. Summoning witness in the Navajo Nation to testify in another state

A. If a judge of a court of record in any state certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within the Navajo Nation is a material witness in such prosecution, or grand jury investigation, and that his or her presence will be required for specified number of days, upon presentation of such certificate to any judge of a court of record in the district in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for a hearing.

B. If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, will give to him or her protection from arrest and the service of civil and criminal process, he or she shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

C. If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his or her attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him or her for the hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that the witness be forthwith taken into custody and delivered to an officer of the requesting state.

D. If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars (\$5.00) for each day that he or she is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he or she shall be punished in the manner provided for the punishment of a witness who disobeys a summons issued from a District Court of the Navajo Nation.

History

CS-60-89, September 15, 1989.

§ 1972. Witness from another state summoned to testify in the Navajo Nation

A. If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or prosecutors investigations commenced or about to commence, in this jurisdiction, is a material witness in a prosecution pending in a district court of the Navajo Nation, or in prosecutorial investigation which is commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. This certificate shall be presented to a judge or a court of record in the county in which the witness is found.

B. If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the Navajo Nation to assure his or her attendance in the Navajo Nation, such judge may direct that the witness be forthwith brought before him or her; and the judge being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof, may order that the witness be forthwith taken into custody and delivered to an officer of the Navajo Nation, which order shall be sufficient authority to the officer to take the witness into custody and hold him or her unless and until he or she may be released by bail, recognizance or order of the judge issuing the certificate.

C. If the witness is summoned to attend and testify in the Navajo Nation he or she shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars (\$5.00) for each day that he or she is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within the Navajo Nation a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court. If such witness, after coming into the Navajo Nation, fails without good cause to attend and testify as directed in the summons, he or she shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in the Navajo Nation.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CS-60-89, September 15, 1989.

§ 1973. Exemption from arrest and service of process

A. If a person comes into the Navajo Nation in obedience to a summons directing him or her to attend and testify in the Navajo Nation he or she shall not while in the Navajo Nation pursuant to such summons be subject to arrest or

the service of process, civil or criminal, in connection with matters which arose before his or her entrance into the Navajo Nation under the summons.

B. If a person passes through the Navajo Nation while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he or she shall not while so passing through the Navajo Nation be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his or her entrance into the Navajo Nation under the summons.

History

CS-60-89, September 15, 1989.

§ 1974. Uniformity of interpretation

This Article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

History

CS-60-89, September 15, 1989.

Subchapter 9. Search and Seizure

§ 2001. Unlawful search or seizure; trespass

No police officer shall search or seize any property without a warrant unless he or she shall know, or have reasonable cause to believe, that the person in possession of such property is engaged in the commission of an offense under Chapter 3 of this Title. Unlawful search or seizure will be deemed trespass and punished in accordance with 17 N.N.C. §§ 350 or 351.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJA-1-59, January 6, 1959.

§ 2002. Warrants—issuance; complaint

Every judge of the Court of the Navajo Nation shall have authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of such court. However, no warrant of search and seizure shall issue except upon a duly signed and written complaint based upon reliable information or belief and charging the commission of some offense against the Navajo Nation.

History

CJA-1-59, January 6, 1959.

§ 2003. Contents

No warrant for search and seizure shall be valid unless it contains the name or description of the person or property to be searched, describes the articles or property to be seized and bears the signature of a duly qualified judge of the Court of the Navajo Nation.

History

CJA-1-59, January 6, 1959.

§ 2004. Service

Service of warrants of search and seizure shall be made only by officers of the Navajo Nation police.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJA-1-59, January 6, 1959.

Chapter 7. Facilities

§ 2201. Plans and construction; authority

The President of the Navajo Nation, with approval of the Public Safety Committee is authorized to approve plans for and cause to be constructed law and order facilities, giving employment preference to Navajo workers in all positions for which they qualified.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CS-79-57, September 18, 1957.

§ 2202. Construction sites; approval

The Public Safety Committee of the Navajo Nation Council, shall approve all construction sites as authorized by 17 N.N.C. § 2201. In so doing, it shall give due consideration to each community's needs, as to where these facilities will best serve the needs of the majority of the people in the area, and, wherever possible, it shall incorporate such facilities with other Navajo Nation-owned improvements in the vicinity.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CS-79-57, September 18, 1957.

Chapter 9. [Deleted]

Chapter 11. Fire Prevention

Subchapter 1. Generally

§ 2701. Closing of areas

A. Upon the advice of the Navajo Forestry Department, the President of the Navajo Nation may order any area of Navajo Nation land closed to entry by the general public because of the danger of fire.

B. Such order shall not prohibit persons who regularly reside within the closed area from going to and from their homes and continuing such of their ordinary activities as do not constitute an unreasonable fire hazard.

C. Such order shall not prohibit officers and employees of the United States or of the Navajo Nation from entering such closed areas in the performance of their official duties.

D. Such order shall not prohibit lessees, licensees, or permittees of the Navajo Nation and their officers and agents from entering such closed areas for the purpose of going to or from their leased, licensed or permitted premises.

E. Such order shall not prohibit grantees of rights-of-way from entering such closed areas for the purpose of necessary maintenance of their right-of-way; but such order may prohibit or restrict the use of any road right of way by the general public.

History

CJN-41-59, June 12, 1959.

§ 2702. Campfires and smoking prohibited

Campfires shall be absolutely prohibited within any area closed to entry by the general public by order of the President. Smoking shall be prohibited in such areas, except inside substantial buildings.

History

CJN-41-59, June 12, 1959.

§ 2703. Posting of closed areas

Whenever an area is closed to entry by the general public by order of the President of the Navajo Nation, signs so stating, and stating that campfires and smoking are prohibited in such area, shall be posted in a conspicuous place on each road and trail entering the closed area. The validity of any order issued by the President of the Navajo Nation closing an area of Navajo Nation land from entry by the general public, however, shall not be affected if such

signs are not posted.

History

CJN-41-59, June 12, 1959.

§ 2704. Removal of unauthorized persons from closed areas

A. It shall be the duty of any Navajo police officer or any employee of the Forestry Department to warn any unauthorized person found in a closed area to leave the closed area at once; and if such person does not comply with such warning without delay, to report such fact to the Chief of Police or any Captain of the Navajo Police.

B. If such person is an Indian, the Chief of Police or Captain shall apply to the District Court of the Navajo Nation for a warrant to apprehend such person. If such person is not an Indian, the Chief or Captain shall apply to the President of the Navajo Nation for an order for the physical removal of such person pursuant to the provisions of 17 N.N.C. § 1901.

C. Where the activities of such person as reported to the Captain or Chief appear to such officer to constitute an unusually grave fire hazard so that irreparable damage to the property of the Navajo Nation will probably occur as a result of the delay, necessary to obtain a warrant to apprehend or order for physical removal, the Chief or Captain may arrest or remove such person without a warrant or order.

D. Where any non-Indian is removed without an order from the President of the Navajo Nation, the officer effecting such removal shall report it as soon as possible to the Chief of Police, who shall report such removal to the President of the Navajo Nation for such further action, under the provisions of 17 N.N.C. § 1901, as the President of the Navajo Nation may deem advisable.

History

CJN-41-59, June 12, 1959.

§ 2705. Penalties

A. Any person who shall violate 17 N.N.C. § 2702, or having been warned to leave a closed area pursuant to 17 N.N.C. § 2704 shall willfully fail or refuse so to leave, shall be deemed guilty of an offense and, upon conviction thereof, may be sentenced to labor for not more than 60 days or to a fine of not more than three hundred dollars (\$300.00), or both.

B. Any non-member who shall violate this Chapter may be excluded from Navajo Nation land pursuant to the provisions of 17 N.N.C. § 1901 *et seq.*

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-41-58, June 12, 1959.

Subchapter 2. Navajo Nation Fireworks Code

§ 2730. Title and establishment

This enactment shall establish and shall be known as the Navajo Nation Fireworks Code.

History

CAP-19-86, April 24, 1986.

§ 2731. Purpose

Insofar as it is practicable, it is the intent and purpose of this Act to regulate the manufacture, possession, sale and use of fireworks within the exterior boundaries of the Navajo Nation. With this enactment, it is hereby declared by the Navajo Nation that possession, manufacture, sale and use of fireworks is against the public health, safety, and welfare of the people of the Navajo Nation, when performed outside of these regulations.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CAP-19-86, April 24, 1986.

§ 2732. Definitions

A. "Fireworks" mean any combustible or explosive composition, or any substance or combination of substances, or device prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridge toy pistols, toy cannons, toy canes or toy guns in which explosives are used, firecrackers, torpedos, sky-rockets, Roman candles, Daygo bombs, sparklers or other devices of like construction and any devices containing an explosive substance, except that the term "fireworks" shall not include any auto flares, paper caps containing not in excess of an average of twenty-five hundredths (.25) of a grain of explosive content per cap and toy pistols, toy canes, toy guns or other devices for use of such caps, if constructed so that the hand cannot come into direct contact with the cap when in place of explosive.

B. "Person" means individual, firm, corporation, employee, or agent.

History

CAP-19-86, April 24, 1986.

§ 2733. Manufacture, possession, sale or use of fireworks

It shall be unlawful within the exterior boundaries of the Navajo Nation for any person to manufacture, attempt to manufacture, possess, store, offer or

expose for sale, sell, use or explode any fireworks, except as provided for in Section 2735, of this Code, and other applicable Navajo Nation and federal laws.

History

CAP-19-86, April 24, 1986.

§ 2734. Illegal and prohibited fireworks

Manufacture, possession, sale and use of the following types of fireworks are strictly prohibited and in violation of this Code:

- A. Cherry Bomb. Red in color-1" in diameter.
- B. Silver Salute. Silver in color-2" in length.
- C. M-80. Red in color-approximately 1" length.

History

CAP-19-86, April 24, 1986.

§ 2735. Exemptions, permit and bond

A. Exemptions. Nothing in this Code shall be construed to prohibit:

1. Public Exhibition shows. A permit shall be required for all such supervised public displays of fireworks by a jurisdiction, fair association, amusement or other organization, or by any artisans in the pursuit of their trade. Every such use or display shall be handled by a competent operator approved by the Navajo Nation Fire Chief, and shall be of such character and location, not to be hazardous to any property or person.

2. Manufacture. Nothing in this Code shall be construed to prohibit a resident manufacturer, jobber, dealer to manufacture, sell (at wholesale only), any fireworks, provided such fireworks are intended for direct shipment out of the Navajo Nation; for supervised displays on the Navajo Nation, or any other uses permitted in Subsection (A) (3) below.

3. Other legitimate uses of fireworks as specifically provided for in accordance with this Code and other applicable federal regulations, such uses including but not limited to wildlife management, agricultural, athletic or sport, blasting or other legitimate industrial purposes on the Navajo Nation. All such use must be properly permitted by the Navajo Nation Fire Department.

B. Permits. Application for a Fireworks Permit shall be made to the Navajo Nation Fire Department offices at least five working days prior to the proposed date of display or use. For manufacture, or wholesale, applicant shall furnish a valid copy of a Business Permit issued by the Business Regulatory Department, prior to said Fireworks Permit application being

accepted by the Fire Chief. After such privilege is granted, it shall be valid only for 48 hours prior to, and 48 hours following the date of display.

C. Bond. Upon application, the Permittee shall furnish proof of a bond or certificate of insurance in an amount deemed adequate by the Navajo Nation Fire Department to satisfy claims for all personal or property damages arising out of any act or omission on the part of such person in connection with the activities permitted.

D. Unfired Fireworks. All such fireworks which are unfired upon expiration of the valid Fireworks Permit, shall be disposed of in a method which is safe for the type of fireworks remaining, under the supervision of the Navajo Nation Fire Department.

History

CAP-19-86, April 24, 1986.

§ 2736. Enforcement authority

A. The Navajo Nation Fire Chief shall have the power to carry out the intent and purposes of this Code; and further, the Navajo Nation Fire Department, commissioned Peace Officers of the Navajo Nation shall be charged with the enforcement of all of the provisions of this Code.

B. Seizures. The Navajo Nation Fire Department, or any of the aforementioned commissioned Police and Peace Officers, shall seize, remove, or cause to be removed at the expense of the owner, all stocks of fireworks or combustible offered or exposed for sale, stored or possessed in violation of this Code.

History

CAP-19-86, April 24, 1986.

§ 2737. Violations of Code

Any person who is determined to be in violation of the provisions of this Code or the provisions of any ordinance complying with this Code, shall be sentenced as follows:

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the District Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000.

CAP-19-86, April 24, 1986.

Title 18

Mines and Minerals

Chapter 1. General Provisions

§ 1. Authority to adopt, amend or repeal regulations

The Resources Committee is authorized to adopt regulations governing all mining operations on Navajo Nation lands, and from time to time amend, alter, modify or repeal such regulations, or any portions thereof, as in its discretion would be in the best interests of the Navajo Nation and the individual members thereof.

History

CM-3-51, March 22, 1951.

Cross References

Resources Committee powers, see 2 N.N.C. § 695(B).

§ 2. Closing of mines not operated in accordance with regulations

All mines on the Navajo Nation shall be closed unless operated in accordance with mining laws and regulations.

History

Executive Committee, Res. 1922-1951, Res. p. 297, July 22, 1937.

Cross References

Navajo Abandoned Mine Lands Reclamation Code, see 18 N.N.C. § 1601.

Mine Safety, see, 18 N.N.C. § 401 *et seq.*

§ 3. Review of mining material by Navajo Nation Office of the Attorney General