

M-60 Crimes of Special Tribal Criminal Jurisdiction

The Pueblo of Pojoaque exercises criminal jurisdiction to the fullest extent possible under tribal, state, and federal law. The Pueblo here adopts the provisions of the Indian Civil Rights Act, 25 USC §1304, pertaining to expanded criminal jurisdiction over non-Indians who commit a covered crime in the Pueblo of Pojoaque. Indians and Non-Indians may be charged with the crimes in this subsection.

Other than for Obstruction of Justice or Assault of Tribal Justice Personnel (Sections M-60 (b) and (f)), if neither the defendant nor the victim is an Indian, the Pueblo may not exercise criminal jurisdiction until tribal jurisdiction is expanded under federal law.

Covered crimes in this subsection are (a) assault of tribal justice personnel; (b) child violence; (c) dating violence; (d) domestic violence; (e) obstruction of justice; (f) sexual violence; (g) sex trafficking; (h) stalking; and (i) violation of a protection order.

(a) Rights of Defendants Charged under this Subsection, in addition to rights enumerated under 25 US section 1302 (a)(6) of the Indian Civil Rights Act.

1. The right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution;
2. If the defendant cannot afford an attorney, the Pueblo will provide without charge the assistance of an appointed defense attorney, licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;
3. The judge presiding over the criminal proceeding must have sufficient legal training to preside over criminal proceedings; and is licensed to practice law by any jurisdiction in the United States;
4. The criminal laws, rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges) of the Pueblo must be publicly available;
5. A record of the criminal proceeding, including an audio or other recording of the trial proceeding, must be maintained;

6. The right to a trial by an impartial jury that is drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community, including non-Indians.
7. The Right to Petition to Stay Detention
 - i. Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Pueblo of Pojoaque and may petition Tribal Court to stay further detention pending the habeas proceeding.
 - ii. Tribal Court shall grant a stay if the Court finds that there is a substantial likelihood that the habeas corpus petition will be granted; and after giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the Court, the petitioner is not likely to flee or pose a danger to any person or the community if released.
8. Petitions for Writs of Habeas Corpus. After a defendant has been sentenced by Tribal Court, the defendant may file a petition for a writ of habeas corpus in a court of the United States under 25 USC §1303.

When Tribal Court has ordered the detention of any person, it has a duty to timely notify in writing such person of their rights and privileges to petition for a writ of habeas corpus under 25 USC §1303.

9. Other Rights. All other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the Pueblo to exercise special tribal criminal jurisdiction over the defendant charged with a covered crime under this subsection.

COVERED CRIMES

(b) Assault of Tribal Justice Personnel

1. Any person who uses, attempts to use, or threatens use of physical force against an individual authorized to act for, or on behalf of, the Pueblo or serving the Pueblo during, or because of, the performance or duties of that individual in—
 - i. preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime;

- ii. adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime;
- iii. detaining, providing supervision for, or providing services for persons charged with a covered crime; or
- iv. incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime;

is guilty of Assault of a Tribal Justice Personnel.

2. Anyone who is convicted of a second or subsequent Assault of Tribal Justice Personnel or Law Enforcement Officer in any jurisdiction or commits Assault of Tribal Justice Personnel with a deadly weapon while she or he is in the lawful discharge of duties related to a covered crime is guilty of Aggravated Assault of Tribal Justice Personnel.
3. Sentencing.
 - i. Anyone convicted of Assault of Tribal Justice Personnel may be sentenced up to a maximum of 365 days of incarceration and/or \$5,000.00.
 - ii. Anyone convicted of Aggravated Assault of Tribal Justice Personnel may be sentenced up to a maximum of 3 years of incarceration and/or \$15,000.00.

(c) Child Violence.

1. Any person who uses, threatens to use, or attempts the use of violence against a child is guilty of an offense.
2. Anyone who is convicted of a second or subsequent crime of child violence in any jurisdiction, or who inflicts great bodily harm against a child; assaults a child with a deadly weapon; or strangles a child is guilty of Aggravated Child Violence.
3. Sentencing
 - i. Anyone convicted of Child Violence may be sentenced up to a maximum of 365 days of incarceration and/or \$5,000.00.

- ii. Anyone convicted of Aggravated Child Violence may be sentenced up to a maximum of 3 years of incarceration and/or \$15,000.00.
4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.

(d) Dating Violence.

1. Any person who commits an act of violence against someone he or she is or has been in a social relationship of a romantic or intimate nature, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship is guilty of an offense. Dating violence is defined as physical harm, bodily injury, or assault; or the infliction of fear that physical harm, bodily injury, or assault could occur momentarily; or terroristic threats; or, criminal sexual conduct.
2. Anyone who is convicted of a second or subsequent Dating Violence charge in any jurisdiction or who inflicts great bodily harm against the victim; commits Dating Violence with a deadly weapon; or strangles the victim is guilty of Aggravated Dating Violence.
3. Sentencing
 - i. Anyone convicted of Dating Violence may be sentenced up to a maximum of 365 days of incarceration and/or \$5,000.00.
 - ii. Anyone convicted of Aggravated Dating Violence may be sentenced up to a maximum of 3 years of incarceration and/or \$15,000.00.
4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.

(e) Domestic Violence.

1. Any person who commits physical harm, bodily injury, or assault; or, the infliction of fear that physical harm, bodily injury, or assault could occur momentarily; or, terroristic threats; or, criminal sexual conduct where the act of violence is committed by (A) a current or former spouse or intimate partner of the victim; (B) a person with whom the victim shares a child in common; (C) a person who is cohabitating with or who has

cohabitated with the victim as a spouse or intimate partner; or (D) a person similarly situated to a spouse of the victim is guilty of Domestic Violence.

2. Anyone who is convicted of a second or subsequent Domestic Violence charge in any jurisdiction or who inflicts great bodily harm against the victim or commits strangulation or commits Domestic Violence with a deadly weapon is guilty of Aggravated Domestic Violence.

3. Sentencing

i. Anyone convicted of Domestic Violence may be sentenced up to a maximum of 365 days of incarceration and/or \$5,000.00.

ii. Anyone convicted of Aggravated Domestic Violence may be sentenced up to a maximum of 3 years of incarceration and/or \$15,000.00.

4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.

(f) Obstruction of Justice. Anyone who influences, obstructs, interferes, or impedes, or endeavors to influence, obstruct, or impede, the administration or due process of the laws of the Pueblo of Pojoaque, including any Tribal criminal proceeding or investigation of a crime is guilty of obstruction of justice.

Anyone convicted of Obstruction of Justice may be sentenced to incarceration for up to 365 days and/or fined up to \$5,000.00.

(g) Sexual Violence.

1. Anyone who forces or manipulates someone else into an unwanted sexual act or contact without their consent, including in any case in which the victim lacks the capacity to consent to the act is guilty of sexual violence.

2. Anyone who (a) has a prior conviction for sexual violence in any jurisdiction; or (b) commits any type of sexual contact with a minor under the age of 17, except when the minor is 14-17 years old and there are 4 or fewer years age difference between the actors and all sexual action is consensual; or (c) uses any weapon or strangulation while committing sexual violence is guilty of Aggravated Sexual Violence.

3. Sentencing

- i. Anyone convicted of Sexual Violence may be sentenced up to a maximum of 365 days of incarceration and/or \$5,000.00.
 - ii. Anyone convicted of Aggravated Sexual Violence may be sentenced up to a maximum of 3 years of incarceration and/or \$15,000.00.
4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders that are necessary for victim safety.

(h) Sex Trafficking.

1. Whoever knowingly recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act knowing, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described, or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, is guilty of a crime.
2. Anyone who is convicted of a second or subsequent sex trafficking charge in any jurisdiction or who inflicts great bodily harm against the victim or uses a deadly weapon in the course of sex trafficking is guilty of Aggravated Sex Trafficking.
3. Sentencing
 - i. Anyone convicted of Sex Trafficking may be sentenced up to a maximum of 365 days of incarceration and/or \$5,000.00.
 - ii. Anyone convicted of Aggravated Sex Trafficking may be sentenced up to a maximum of 3 years of incarceration and/or \$15,000.00.
4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.

(i) Stalking.

1. Anyone who stalks another is guilty of an offense. The term “stalking” means engaging in a pattern of conduct, without lawful authority, directed at a specific person that

would cause a reasonable person— (A) to fear for the person’s safety or the safety of others; or (B) to suffer substantial emotional distress.

2. Anyone who is convicted of a second or subsequent Stalking charge in any jurisdiction or who inflicts great bodily harm against the victim or commits Stalking with a deadly weapon is guilty of Aggravated Stalking.
3. Sentencing
 - i. Anyone convicted of Stalking may be sentenced up to a maximum of 365 days of incarceration and/or \$5,000.00.
 - ii. Anyone convicted of Aggravated Stalking may be sentenced up to a maximum of 3 years of incarceration and/or \$15,000.00.
4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.

(j) Violation of a Protection Order

1. Anyone who commits an act within the Pueblo, that violates a provision of a protection order is guilty of an offense, provided that the order— (i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; (ii) was issued against the defendant; (iii) is enforceable by the Pueblo; and (iv) the issuing Court had proper jurisdiction over the parties and matter to issue the order of protection; and the restrained party had reasonable notice and opportunity to be heard to protect that person’s right to due process. In the case of ex-parte orders, notice and opportunity to be heard must be provided within a reasonable time after the order is issued, sufficient to protect the respondent’s due process rights.

The term “protection order” means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

2. Aggravated Violation of a Protection Order. Anyone who is convicted of a second or subsequent Violation of a Protection Order, in any jurisdiction, or who inflicts great bodily harm against the victim, or uses a deadly weapon in the commission of the violation of a protection order is guilty of Aggravated Violation of a Protection Order.
3. Sentencing
 - i. Anyone convicted of Violation of a Protection Order may be sentenced up to a maximum of 365 days of incarceration and/or \$5,000.00.
 - ii. Anyone convicted of Aggravated Violation of a Protection Order may be sentenced up to a maximum of 3 years of incarceration and/or \$15,000.00.
4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.