

Subpart M Criminal Offenses

M-1 Definitions

In this Subpart, unless the context otherwise requires:

- (a) “Adult” shall mean a person who is 18 years of age or older.
- (b) “Bodily injury” shall mean impairment of physical condition or substantial pain.
- (c) “Deadly weapon” shall mean any instrument used in such a manner as to render it capable of causing death or serious bodily injury.
- (d) “Dangerous weapon” shall mean any instrument of the type described in Section M-10 of this Subpart.
- (e) “Serious bodily injury” shall mean 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.
- (f) “Sexual contact” shall mean any contact of the sexual or other private parts of another for the purpose of arousing or gratifying sexual desire of either party.
- (g) “Person” shall mean an Indian person.
- (h) “Range management personnel” shall mean the Nature Resource Manager of the BIA or his representative.

M-2 Abduction

(a) A person who willfully takes or entices away:

- 1. Any child under the age of thirteen (13) years from his parents, guardian or custodian; or
- 2. Any person from his lawful custodian, or against his will and desire, no lawful right to do so, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed one hundred and eighty dollars (\$180.00), or both.

M-3 Aiding and Abetting

(a) When an act is declared an offense under this Code, and no punishment for counseling or aiding in the commission of the act is expressly prescribed by the law, a person who counsels or aids another in the commission of the act is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed the maximum penalty for the offense for which he aided and abetted.

M-4 Assault

(a) A person who unlawfully attempts or threatens to cause bodily injury to another is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed twenty (20) days or to pay a fine not to exceed twenty dollars (\$20.00), or both.

M-5 Battery

(a) A person who:

1. Willfully and unlawfully uses force or violence upon the person of another; or
2. By threatening force or violence, causes another to harm himself; or
3. Recklessly causes physical injury to another is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

M-6 Bigamy

(a) A person who marries another person while having a husband or wife living is guilty of an offense.

(b) Paragraph (a) of this section shall not apply to any person whose husband or wife has been absent for five years, without being known to such person within that time to be living, nor to any person whose former marriage has been dissolved by any court of competent jurisdiction.

(c) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed ninety dollars (\$90.00), or both.

M-7 Bribery – Giving

(a) A person who gives or offers to give to another person money, property or other things of value with intent to influence a public servant in the discharge of his public duties is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

M-8 Bribery – Receiving

(a) A public servant who asks, receives, or offers to receive from another, money, property or other things of value, with intent or upon a promise to be influenced in the discharge of his public duties, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

M-9 Bribery – Soliciting

(a) A person who obtains or seeks to obtain money, property, or other things of value, upon claim or representation that he can or will improperly influence the action of a public servant in the discharge of his public duties is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

M-10 Carrying a Concealed Weapon

(a) A person who has concealed on or about his person a dangerous weapon is guilty of an offense.

(b) A dangerous weapon as used in Paragraph (a) of this section shall include any:

1. Air-gun, blowgun, explosive device, pistol or other firearm;
2. Bayonet, dagger, switchblade, bowie knife, or other kind of knife;
3. Sling shot, club, blackjack or chain;
4. Sword, sword cane or spear;
5. Metal knuckles; or
6. Any other instrument capable of lethal use, possessed under circumstances not appropriate for lawful use.

(c) A folded pocket knife with a blade three inches (3”) or less is not considered a dangerous weapon, except a switchblade.

(d) Paragraph (a) shall not apply to any person authorized by the Pueblo of Pojoaque, tribal, state, federal governments or subdivisions thereof to carry such weapons.

(e) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed sixty dollars (\$60.00), or both.

(f) Any weapons concealed in violation of this section shall be subject to seizure and forfeiture as provided in Subpart H-24.

M-11 Child Molesting

(a) A person who:

1. Engages in sexual intercourse with a person under the age of sixteen (16) years, not his spouse; or
2. Subjects a person under the age of sixteen (16) years, not his spouse, to any sexual contact is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

M-12 Conspiracy

(a) A person is guilty of conspiracy if, with the intent to commit or to have another person commit any action constituting an offense under this Code, he conspires with one or more persons to engage in or cause the commission of such.

(b) No agreement amounts to a conspiracy unless some act besides such agreement is done to affect the object thereof by one or more of the parties to the agreement.

(c) Upon a trial for conspiracy, the defendant shall not be convicted unless one or more overt acts are expressly alleged in the complaint, nor unless one of the acts alleged is provided, but other overt acts not alleged may be given in evidence.

(d) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

M-13 Contributing to the Delinquency of a Minor

(a) An adult person who:

1. Knowingly causes, encourages or advises a minor to commit an offense as defined under the provisions of Subpart L of this Code is guilty of an offense.
2. Knowingly causes, encourages or assists a minor to be delinquent as defined under the provisions of Subpart L of this Code is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

M-14 Criminal Negligence

(a) A person who:

1. Recklessly endangers the safety of another; or
2. Acts with careless disregard for the safety of another is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed sixty dollars (\$60.00), or both.

M-15 Criminal Trespass

(a) A person who:

1. Enters or remains upon any public property for an unlawful purpose; or
2. Without good cause enters, remains upon, or traverses lands or other property not his own, where notice against trespassing has been reasonably communicated by the owner or occupant is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed thirty (30) days or to pay a fine not to exceed thirty dollars (\$30.00), or both.

M-16 Cruelty to Animals

(a) Any person who engages in any of the following acts shall be guilty of violating this Section:

1. Tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or cruelly kills any animal;
2. Unnecessarily fails to provide any animal with proper food or drink; or
3. Allows any pet to run at large within the exterior boundaries of the Pueblo of Pojoaque.

(b) A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed five hundred dollars (\$500), or both.

(c) Any person who violates this Section shall also be liable for any costs accrued by the Santa Fe County Animal Control Unit.

M-17 Disobedience of Lawful Order of the Court

(a) A person who willfully disobeys any order, subpoena, warrant or command, duly issued by the Pueblo of Pojoaque Tribal Court or any officer thereof is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed fifty (50) days or to pay a fine not to exceed fifty dollars (\$50.00), or both.

M-18 Disorderly Conduct

(a) A person who:

1. Engages in fighting or provokes a fight;
2. Disrupts any lawful public or religious meeting;
3. Causes unreasonable noise; or
4. Uses language or gestures knowing them to be obscene or likely to provoke a fight, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed sixty dollars (\$60.00), or both.

M-19 Disposing of Property of an Estate

(a) A person who, without proper authority, uses, sells, transfers, or otherwise disposes of any property of an estate before determination of devisees, heirs, or other distributees is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed ninety dollars (\$90.00), or both.

M-20 Escape

(a) A person who willfully escapes, attempts to escape, or assists in an escape from lawful custody is guilty of an offense.

(b) "Lawful Custody" shall mean confinement by court order or actual or constructive restraint by a police officer pursuant to an arrest.

(c) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed one hundred and eighty dollars (\$180.00), or both.

M-21 Extortion

(a) A person who compels or induces another person to deliver property to himself or to a third person by threatening that if the property is not delivered, the actor or another will:

1. Cause physical injury to some person;
2. Cause damage to property;
3. Accuse some person of a crime or cause criminal charges to be instituted against some person;
4. Expose a secret or publicize an asserted fact, whether true or false; tending to subject some person to hatred, contempt or ridicule;
5. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
6. Use or abuse his position as a public servant by performing some act within or related to his official duties or by failing or refusing to perform an official duty in such manner as to affect some person adversely is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

M-22 Failure to Submit to Treatment for a Contagious Disease

(a) A person who knows or has reason to know that he is infected with a venereal disease, active tuberculosis or other contagious disease and who willfully exposes another to the disease, in a place other than a medical facility, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and twenty (120) days; provided, that such sentence shall be suspended if the offender agrees to medical treatment.

(c) The Court upon finding reasonable cause to believe that a person has any contagious diseases may order the person examined. If, upon examination, the person is found to be infected with any of the aforementioned diseases, the Court may order the person to submit to medical treatment as prescribed by competent medical authority.

M-23 Failure to Send Children to School

(a) A person who, without good cause, fails or refuses to send his children or any children under his care to school, while such children are between the ages of six (6) and sixteen (16), is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed sixty dollars (\$60.00), or both.

M-24 Failure to Support

(a) A person who knowingly and without justification fails to support, care for, or protect a spouse, child or other person for whose support he is responsible is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed ninety dollars (\$90.00), or both.

M-25 Forgery

(a) A person who, with intent to defraud:

1. Falsely signs, completes or alters any written instrument;
2. Passes as genuine that which he knows to be a forged instrument is guilty of an offense.

(b) "Forged instrument" shall mean a written instrument which has been falsely signed, completed or altered.

(c) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed one hundred and eighty dollars (\$180.00), or both.

M-26 Fraud

(a) A person who obtains property:

1. By willful misrepresentation of fact; or
2. By falsely interpreting; or
3. By failure to reveal facts which he knows should be revealed with intent to defraud another of such property is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed one hundred and eighty dollars (\$180.00), or both.

M-27 Gambling

(a) A person who knowingly stakes or risks a thing of value in a game of chance upon an agreement or understanding that he or some other person may receive something of value depending on the outcome is guilty of an offense.

(b) Under Paragraph (a) of this section, “bingo,” raffles and lotteries shall not be considered games of chance when conducted by religious or charitable organizations authorized by the Tribal Council to conduct such games.

(c) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed twenty (20) days or to pay a fine not to exceed twenty dollars (\$20.00), or both.

M-28 Unlawful Restraint

(a) A person who unlawfully causes the removal, detention or confinement of another person, so as to interfere with that person’s liberty is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed one hundred and eighty dollars (\$180.00), or both.

M-29 Indecent Exposure

(a) A person who willfully exposes his or her sexual organs to public view under circumstances in which he or she knows or should know such conduct is likely to offend others is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed thirty (30) days or to pay a fine not to exceed thirty dollars (\$30.00), or both.

M-30 Inhaling Toxic Vapors

(a) A person who inhales the vapors or fumes of paint, gas, glue or other toxic products for the purpose of becoming intoxicated is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed sixty dollars (\$60.00), or both.

M-31 Interfering with an Officer

(a) A person who willfully prevents or attempts to prevent a police officer from effecting an arrest or from otherwise discharging his official duty by:

1. Creating a substantial risk of bodily harm to the officer or any other person; or
2. Employing means of resistance which justify or require substantial force to overcome, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed sixty dollars (\$60.00), or both.

M-32 Joyriding

(a) A person who, without proper authority operates, or otherwise uses any vehicle not his own, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed thirty (30) days or to pay a fine not to exceed thirty dollars (\$30.00), or both.

M-33 Liquor Violation

(a) Any unlicensed person who possesses, sells, trades, transports or manufactures any beer, ale, wine, whiskey or any other beverage which produces alcoholic intoxication is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed one hundred dollars (\$100.00), or both.

M-34 Littering

(a) A person who intentionally:

1. Discards or deposits any trash, garbage, debris or other refuse upon any land not his own; or
2. Permits any trash, garbage, debris or other refuse to be thrown from a vehicle which he is operating is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed thirty (30) days or to pay a fine not to exceed thirty dollars (\$30.00), or both.

M-35 Maintaining a Public Nuisance

(a) A person who:

1. Endangers the health or safety of another; or
2. Interferes with the enjoyment or property of another, by willfully or negligently permitting a hazardous, unsightly or unhealthy condition to exist on property under his possession or control is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed ten (10) days or pay a fine to exceed ten dollars (\$10.00), or both.

(c) In addition to any penalty imposed under Paragraph (b) of this section, the Court shall order that the nuisance be abated within a reasonable time.

M-36 Misusing Property

(a) A person who, without proper authority, knowingly uses or damages any property not his own is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed twenty (20) days or to pay a fine not to exceed twenty dollars (\$20.00), or both.

M-37 Narcotics and Dangerous Drugs

Repealed on January 28, 2010.

M-38 Perjury

(a) A person who knowingly makes a false statement while under oath, or who induces another to do so, or who signs an affidavit knowing the same to be false is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed one hundred and eighty dollars (\$180.00), or both.

M-39 Possession of Marijuana

Repealed on January 28, 2010.

M-40 Prostitution

(a) A person who:

1. Solicits or practices prostitution; or
2. Knowingly provides, keeps, rents, leases or otherwise maintains any place or premises for the purpose of prostitution is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed seventy (70) days or to pay a fine not to exceed seventy dollars (\$70.00), or both.

M-41 Public Intoxication

(a) A person who appears in a public place while under the influence of alcohol, marijuana, toxic vapors or substances, the use or possession of which is prohibited under M-56 of Subpart M of this Code, not therapeutically administered, to the degree that he may reasonably endanger himself or other persons or property is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed sixty dollars (\$60.00), or both.

M-42 Receiving Stolen Property

(a) A person who buys, receives, conceals or aids in concealing any property which he know or should know has been obtained by theft, extortion, fraud or other means constituting an offense under the provisions of this Code is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed sixty dollars (\$60.00), or both.

M-43 Refusing to Aid an Officer

(a) A person who willfully refuses to assist a police officer:

1. In the lawful arrest of any person; or
2. In conveying a lawfully arrested person to the nearest place of confinement, when such assistance is reasonably requested is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed fifty (50) days or to pay a fine not to exceed fifty dollars (\$50.00), or both.

M-44 Removal or Destruction of Antiquities

(a) A person who, without proper authority, removes, excavates, injures or destroys any historic or prehistoric ruin or monument or any object of antiquity is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

M-45 Shoplifting

(a) A person who willfully takes possession of any goods offered for sale by any mercantile establishment without the consent of the owner or manager with the intent to convert such goods to his own use without paying for them is guilty of an offense.

(b) A person who willfully conceals or attempts to conceal any goods offered for sale:

1. On the person or among his belongings; or
2. On the person, or among the belongings of another, is presumed to have taken possession of such goods with the intent to convert them to his own use without paying for them.

(c) A police officer, merchant or merchant's employee who has reasonable cause to believe that a person has willfully taken possession of goods with the intent to convert them without paying for them may detain and interrogate the person in regard thereto in a reasonable manner and for a reasonable time.

(d) If a police officer, merchant or merchant's employee detains and interrogates a person pursuant to Paragraph (c) of this Section and the person thereafter brings civil or criminal action against the police officer, merchant or merchant's employee, based upon the detention and interrogation, such reasonable cause shall be a defense to the action, if the detention and interrogation were performed in a reasonable manner for a reasonable time.

(e) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed thirty (30) days or to pay a fine not to exceed thirty dollars (\$30.00), or both.

M-46 Theft

(a) A person who unlawfully takes or exercises control over property not his own, whether or not possession was originally obtained with consent of the owner, with the intent of permanently depriving the owner of the value or use of the property, for the benefit of himself or another is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

M-47 Unlawful Burning

(a) A person who:

1. Willfully and unlawfully causes or attempts to cause damage to any property by fire or explosion;
2. Negligently causes damage to any property by fire or explosion; or
3. Sets fire to any forest, brush or grasslands, or sets a campfire with careless disregard for the spread or escape of such fire, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and twenty (120) days or to pay a fine not to exceed one hundred and twenty dollars (\$120.00), or both.

M-48 Malicious Mischief

Any person who shall maliciously disturb, injure or may destroy livestock or other domestic animal, or other property shall be deemed guilty of malicious mischief and upon conviction thereof shall be sentenced to labor for a period not to exceed six (6) months.

M-49 Driving Under the Influence of Intoxicating Liquor or Drug

- (a) It is unlawful for any person who is under the influence of intoxicating liquor or drug to drive any vehicle within the exterior boundaries of the Pueblo of Pojoaque.
- (b) Proof of intoxication shall be based upon evidence of intoxication presented to the Court.
- (c) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000), or both.

M-50 Possession of a Weapon While Under the Influence of Intoxicating Liquor or Drug

- (a) It is unlawful for any person who is under the influence of intoxicating liquor or drug to carry a weapon while they are within the exterior boundaries of the Pueblo of Pojoaque.
- (b) Proof of intoxication shall be based upon evidence of intoxication presented to the Court.
- (c) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000), or both.

M-51 Shooting in Residential Areas

- (a) If there is probable cause of persons (Tribal Members or Non-Tribal Members) who are firing guns (weapons) in the Residential areas, a search warrant will be executed, and all guns (weapons) will be confiscated and tested. If they are found to have been fired recently the person(s) will be dealt with by the following:

1st Offense- Five thousand dollar (\$5,000) fine plus one (1) year banned from Pueblo.

2nd Offense- Five thousand dollar (\$5,000) fine plus five (5) years banned from Pueblo.

- (b) Tribal Members will also lose Tribal benefits for the amount of time banned from Pueblo.

M-52 Threats or Physical Harm to Elected or Appointed Officials

- (a) Any person who threatens physical harm or commits an act of physical harm to an elected or appointed Pueblo of Pojoaque Tribal Official or a person conducting the official duties of the Pueblo of Pojoaque Tribal government shall be subject to this section.

- 1. An elected or appointed Pueblo of Pojoaque Tribal Official is defined as any person who is elected or appointed by the Pueblo of Pojoaque General Council or Tribal Council to carry out duties on behalf of the Pueblo of Pojoaque.

2. A person conducting the official duties of the Pueblo of Pojoaque Tribal Government is defined as any person who is appointed by the Pueblo of Pojoaque to carry out official Tribal government duties.

3. A threat of physical harm is defined as any verbal or written threat of physical harm against a Tribal Official that is communicated to a third party.

4. An act of physical harm is defined as any intentional bodily touching of a Tribal Official that is intended to harm the Tribal Official.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty five (365) days or to pay a fine not to exceed five thousand dollars (\$5,000), or both.

M-53 RESERVED

M-54 Disenrollment Policy for Enrolled Members Convicted of Trafficking

(a) For the purposes of this Section,

1. “Trafficking in Illegal Drugs” is defined as a criminal conviction in any Tribal, Federal, or State Court for trafficking, selling, or intending to sell illegal drugs.
2. “Illegal Drugs” is defined as any drug, the possession of which is prohibited by Federal law. “Illegal drugs” is also defined as any legal drug, the possession of which is illegal when it is not prescribed by an authorized, licensed physician.

(b) Upon evidence of conviction of “Trafficking in Illegal Drugs,” the Tribal Secretary shall report to the Tribal Council that the Pueblo of Pojoaque enrolled Member is disenrolled and excluded from the Pueblo of Pojoaque for life.

(c) The disenrollment shall become effective the day of the conviction.

M-55 Trafficking in Illegal Drugs

(a) “Trafficking” is defined as the intention to sell illegal drugs or the selling of illegal drugs.

(b) “Illegal drugs” is defined as any drug, the possession of which is prohibited by Federal law. “Illegal drugs” is also defined as any legal drug, the possession of which is illegal when it is not prescribed by an authorized, licensed physician.

(c) “Intention to sell illegal drugs” may be determined when there are indicators of sales of illegal drugs. Indicators may include, when found in combination with the illegal drugs, that there are sufficient quantities of illegal drugs for sale purposes, amount of cash indicating the intent to sell, weapons, or paraphernalia such as scales, baggies or written notations. The Tribal Judge shall determine whether the indicators are sufficient to indicate an intent to sell illegal drugs.

- (d) “Sale” is defined as the exchange of cash, or bartering, for illegal drugs.
- (e) The penalties for trafficking in illegal drugs may include imprisonment for a period not to exceed three hundred and sixty five (365) days or to pay a fine not to exceed five thousand dollars (\$5,000), or both.
- (f) The Tribal Police may petition the Tribal Court for forfeiture of any indicators of trafficking.

M-56 Dangerous Drugs Policy

- (a) “Dangerous drugs” are defined as any drug, the possession of which is prohibited by Federal and State law. “Dangerous drugs” also includes any legal drug, the possession of which is illegal when it is not prescribed by an authorized, licensed physician.
- (b) Any person who illegally possesses, uses, abuses, gives away, manufacturers or sells dangerous drugs is guilty of a criminal offense.
- (c) Any person who harbors a person who possesses, uses, abuses, gives away, manufacturers or sells dangerous drugs is guilty of a criminal offense.
- (d) Any person who illegally possesses paraphernalia used in the manufacturing, injection, ingestion, smoking or introduction into the body of a dangerous drug is guilty of a criminal offense.
- (e) Any person arrested for possession, using, abusing, giving away, manufacturing, or selling dangerous drugs or paraphernalia used in relation to dangerous drugs shall undergo mandatory drug testing at the time of arrest. Law enforcement shall present such findings to the Court and Tribal Officials at the time of arraignment.
- (f) Any person who is convicted under this Section may be sentenced to a maximum of three hundred and sixty five (365) days of incarceration or a five thousand dollar (\$5,000) fine, or both and may be excluded by the Tribal Court from entering the exterior boundaries of the Pueblo of Pojoaque.
- (g) The Tribal Council shall consider in sentencing that the Tribal Council prefers that offenders are sentenced to treatment when the offender shows remorse and is willing and ready to undergo treatment.
- (h) Upon evidence of conviction of “Trafficking in Illegal Drugs,” the Tribal Secretary shall report to the Tribal Council that the Pueblo of Pojoaque enrolled Member is disenrolled and excluded from the Pueblo of Pojoaque for life.
- (i) The disenrollment shall become effective the day of the conviction.

M-57 Heroin Control Act

(a) The Pueblo of Pojoaque has a zero tolerance policy of heroin and intravenous use of illegal drugs. This policy includes civil and criminal prohibitions and adoption of medical treatment approaches to combat the problem to protect the community and families.

(b) The Heroin Control Act supersedes all prior conflicting provisions concerning heroin and intravenous use of illegal drugs that are contained in the Tribal Law and Order Code regulations and ordinances, lease agreements or employee handbooks.

(c) A copy of the Heroin Control Act of 2012 shall be made available to all enrolled Members of the Pueblo of Pojoaque.

(d) Heroin and Intravenous Use of Illegal Drugs.

1. Any person who buys, possesses, sells or uses heroin within the exterior boundaries of the Pueblo of Pojoaque shall be considered a threat to the public health, safety and welfare.

2. Any person who admits to or is arrested for heroin or intravenous use of illegal drugs within the exterior boundaries of the Pueblo of Pojoaque shall be considered a threat to the public health, safety and welfare and shall undergo mandatory drug testing at the time of arrest. Law enforcement shall present such findings to the Court and Tribal Officials at the time of arraignment.

3. Any person who is found guilty in any court of law of heroin or intravenous use of illegal drugs shall be considered a threat to the public health, safety and welfare.

4. Any Tribal Police Officer who suspects a person of heroin use or intravenous use of illegal drugs may petition the Tribal Court for scientific testing of the suspected user.

5. Any allegation of suspicion shall be supported by written and verified facts before scientific testing is ordered by the Tribal Court.

(e) Penalties.

1. Any person who is a threat to the health, safety and welfare of the Pueblo of Pojoaque under the provisions of this Section shall be subject to the following penalties:

A. An Indian found guilty of violating this Section may be sentenced to imprisonment for a period not to exceed one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000), or both, per violation.

B. Exclusion from the exterior boundaries of the Pueblo of Pojoaque for a duration to be determined by the Tribal Court.

C. Immediate termination of employment and Tribal benefits for a duration to be determined by the Tribal Court.

D. The violator may be responsible for payment of treatment costs.

E. A neglected child adjudication of unlimited duration for any parent of an Indian child when the parent is a threat to the public health, safety and welfare under the provisions of this Section.

(f) Rescission of Penalties.

1. The Tribal Court shall provide a written Order to the person who is determined to be a threat to the public health, safety and welfare. The Order shall set out the conditions under which any of the penalties imposed may be rescinded.

2. In the case of neglected child adjudication, the parent has two (2) years in which to successfully comply with the Tribal Court's Order. If the parent has not successfully complied with the Tribal Court's Order within two (2) years, termination of parental rights shall be initiated by the Pueblo of Pojoaque Social Services Department. The two (2) years may be extended by the Tribal Court with a written justification for the extension.