

Bureau of Indian Affairs, Interior

§ 11.401

a criminal offense under the regulations of this part may be sentenced to one or a combination of the following penalties:

(1) Imprisonment for a period not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than six months.

(2) A money fine in an amount not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than five hundred dollars (\$500).

(3) Labor for the benefit of the tribe.

(4) Rehabilitative measures.

(b) In addition to or in lieu of the penalties provided in paragraph (a) of this section, the court may require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person by means of the surrender of property, payment of money damages, or the performance of any other act for the benefit of the injured party.

(c) If, solely because of indigence, a convicted offender is unable to pay forthwith a money fine assessed under any applicable section, the court shall allow him or her a reasonable period of time to pay the entire sum or allow him or her to make reasonable installment payments to the clerk of the court at specified intervals until the entire sum is paid. If the offender defaults on such payments the court may find him or her in contempt of court and imprison him or her accordingly.

§ 11.316 Probation.

(a) Where a sentence of imprisonment has been imposed on a convicted offender, the Court of Indian Offenses may, in its discretion, suspend the serving of such sentence and release the person on probation under any reasonable conditions deemed appropriate by the court, provided that the period of probation shall not exceed one year.

(b) Any person who violates the terms of his or her probation may be required by the court to serve the sentence originally imposed or such part of it as the court may determine to be suitable giving consideration to all the circumstances, provided that such revocation of probation shall not be or-

dered without a hearing before the court at which the offender shall have the opportunity to explain his or her actions.

§ 11.317 Parole.

(a) Any person sentenced by the court of detention or labor shall be eligible for parole at such time and under such reasonable conditions as set by the Court of Indian Offenses.

(b) Any person who violates the conditions of his or her parole may be required by the court to serve the whole original sentence, provided that such revocation or parole shall not be ordered without a hearing before the court at which the offender shall have the opportunity to explain his or her actions.

§ 11.318 Extradition.

Any Court of Indian Offenses may order delivery to the proper state, tribal or BIA law enforcement authorities of any person found within the jurisdiction of the court, who is charged with an offense in another jurisdiction. Prior to delivery to the proper officials, the accused shall be accorded a right to contest the propriety of the court's order in a hearing before the court.

Subpart D—Criminal Offenses

§ 11.400 Assault.

(a) A person is guilty of assault if he or she:

(1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or

(2) Negligently causes bodily injury to another with a deadly weapon; or

(3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

(b) Assault is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

§ 11.401 Recklessly endangering another person.

A person commits a misdemeanor if he or she recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury. Recklessness and danger shall

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be presumed where a person knowingly points a firearm at or in the direction of another person, whether or not the actor believed the firearm to be loaded.

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§ 11.402 Terroristic threats.

A person is guilty of a misdemeanor if he or she threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly or facility of public transportation, or otherwise to cause serious public inconvenience or in reckless disregard of the risk of causing such terror or inconvenience.

§ 11.403 Unlawful restraint.

A person commits a misdemeanor if he or she knowingly:

- (a) Restrains another unlawfully in circumstances exposing him or her to risk of serious bodily injury; or
- (b) Holds another in a condition of involuntary servitude.

§ 11.404 False imprisonment.

A person commits a misdemeanor if he or she knowingly restrains another unlawfully so as to interfere substantially with his or her liberty.

§ 11.405 Interference with custody.

(a) *Custody of children.* A person commits a misdemeanor if he or she knowingly or recklessly takes or entices any child under the age of 18 from the custody of his or her parent, guardian or other lawful custodian, when he or she has no privilege to do so.

(b) *Custody of committed person.* A person is guilty of a misdemeanor if he or she knowingly or recklessly takes or entices any committed person away from lawful custody when he or she does not have the privilege to do so. *Committed person* means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

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§ 11.406 Criminal coercion.

(a) A person is guilty of criminal coercion if, with purpose to unlawfully restrict another's freedom of action to his or her detriment, he or she threatens to:

- (1) Commit any criminal offense; or
- (2) Accuse anyone of a criminal offense; or
- (3) Take or withhold action as an official, or cause an official to take or withhold action.

(b) Criminal coercion is classified as a misdemeanor.

§ 11.407 Sexual assault.

(a) A person who has sexual contact with another person not his or her spouse, or causes such other person to have sexual contact with him or her, is guilty of sexual assault as a misdemeanor, if:

- (1) He or she knows that the conduct is offensive to the other person; or
- (2) He or she knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature or his or her conduct; or
- (3) He or she knows that the other person is unaware that a sexual act is being committed; or
- (4) The other person is less than 10 years old; or

(5) He or she has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

(6) The other person is less than 16 years old and the actor is at least four years older than the other person; or

(7) The other person is less than 21 years old and the actor is his or her guardian or otherwise responsible for general supervision of his or her welfare; or

(8) The other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him or her.

(b) Sexual contact is any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, or for the