

LOWER BRULE SIOUX TRIBAL COURT LAW AND ORDER CODE CRIMINAL CODE



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LOWER BRULE SIOUX TRIBE CRIMINAL CODE

I. GENERAL PROVISIONS

1-1-01. NAME AND CITATION

This title shall be known and may be cited as the “Lower Brule Sioux Tribe Law and Order Code-Criminal Code,” and reference in this part to the “Code” shall refer to this Code unless another is clearly indicated.

1-1-02. EFFECTIVE DATE

This Code shall apply to all offenses as herein defined occurring on or after its effective date. If all or any part of any offense was committed prior to such date, the offense shall be governed by prior existing law except that defenses enumerated herein shall apply to all offenses tried after the effective date.

1-1-03. SEVERABILITY

If any provision of this Code or the application of any provision of this Code to any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby.

1-1-04. STATUTE OF LIMITATIONS

No person shall be charged with any crime unless charged within one year after its commission.

1-1-05. PROSECUTION IN FEDERAL COURT

Prosecution of an offense is not barred because the defendant could be or has been charged under 18 U.S.C. § 1153 (so-called Major Crimes Act) unless such charge has, in fact, resulted in a conviction or acquittal of the defendant by a Federal Court following trial.

1-1-06. DEFENSES

The following defenses to a criminal charge shall be available to defendant, including, but not limited to:

- a. Double jeopardy
- b. Ignorance and/or mistake
- c. Insufficiency of evidence to establish guilt beyond a reasonable doubt

- d. Duress
- e. Intoxication when negating specific intent
- f. Consent of victim
- g. Failure to prove elements of crime charged
- h. Entrapment
- i. Mental disease or defect when causing substantial incapacity to appreciate the wrongfulness of conduct or to conform conduct to the requirements of the law
- j. Justification
- k. Self defense
- l. Alibi

1-1-07. HATE CRIMES

1. Any person who willfully causes bodily injury, or attempts to do so, because of the victim's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability is guilty of a hate crime.
2. Any person who intentionally defaces, damages, or destroys religious property because of the religious nature of the property or because of the race, color, religion, national origin, gender, sexual orientation, disability, or ethnic characteristics of the people associated with the property is guilty of a hate crime.
3. Any person who intentionally obstructs by force or threat of force any other person in the enjoyment of that person's free exercise of religious beliefs is guilty of a hate crime.
4. Any person who uses or threatens to use force to willfully interfere with any person because of the person's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability and because the person is participating in a federally protected activity such as public education, employment, jury service, travel, or the enjoyment of public accommodations is guilty of a hate crime.
5. Any person who conspires with one or more other persons to violate the provisions of this section shall be guilty of a hate crime.
6. Punishment. If a hate crime is charged and proved beyond a reasonable doubt, or admitted to by the defendant, the crime is a Class A offense. If a hate crime is charged and proved in conjunction with any other offense under the Lower Brule Sioux Tribe Law and Order Code-Criminal Code which was the result of the hate crime or otherwise connected to the hate crime, the authorized punishment for the underlying offense may be increased to

the next highest class of punishment. The hate crime and other offenses may be punished separately.

1-1-08. CRIMINAL RESPONSIBILITY

Any person who commits an offense prohibited by this Code is responsible as the principal offender. In addition, any person who, with the intent to promote or facilitate the commission of a crime, aids, abets, or advises another person in planning or committing the crime, is legally accountable as a principal to the crime and may be punished as such.

1-1-09. ATTEMPT

1. Definition—An attempt to commit an offense under this code exists when
 - a. a person takes a substantial step toward the commission of an offense, and
 - b. does so with the intent to commit the offense.
2. Any person who attempts to commit a crime and, in the attempt, does any act which is a substantial step toward the commission of the crime is punishable for such attempt at a maximum sentence of one-half of the penalty prescribed for the underlying crime unless otherwise prescribed by law.

1-1-10. SOLICITATION

1. Any person who, with the intent to promote or facilitate the commission of a crime, commands, hires, or requests another person to engage in specific conduct which would constitute the commission of such offense or an attempt to commit such offense, is guilty of criminal solicitation.
2. Criminal Solicitation is punishable at a maximum sentence of one-half of the penalty prescribed for the underlying offense, unless otherwise prescribed by law.

II. SENTENCES AND PUNISHMENTS

1-2-01. DESIGNATION OF OFFENSES

Offenses are designated as Class A offenses, Class B offenses, Class C offenses, and Class D offenses.

1-2-02. CLASS OF OFFENSES NOT SPECIFIED

Any offense for which no penalty or sentence is specifically designated as a certain class of offense shall be treated for purposes of sentencing and punishment as a Class D offense.

1-2-03. MAXIMUM FINES AND SENTENCES OF IMPRISONMENT

1. A person convicted of an offense may be sentenced as follows:

- a. If the offense is a Class A offense, to a term of imprisonment not to exceed one year or to a fine not to exceed \$5000.00, or both;
- b. If the offense is a Class B offense, to a term of imprisonment not to exceed 6 months or to a fine not to exceed \$2000.00, or both;
- c. If the offense is a Class C offense, to a term of imprisonment not to exceed 3 months or to a fine not to exceed \$1000.00, or both.
- d. If the offense is a Class D offense, to a term of imprisonment not to exceed 30 days or to a fine of \$500, or both.

2. The fines listed above may be imposed in addition to any assessment of costs or other civil penalties and in addition to any amounts ordered paid as restitution. Such penalties may include Forfeiture, as provided in the Controlled Substances code.

3. Any individual who is convicted of a hate crime may be sentenced to the next highest level of offense. In addition, that person's use of firearms may be restricted pursuant to Section § 1-3C-27 Weapons Offense.

4. If the victim of any offense in the Lower Brule Sioux Tribe Law and Order Code-Criminal Code is a child under the age of 18, the penalty may be increased to a Class A offense.

1-2-04. AUTHORITY OF COURT IN SENTENCING

The court upon conviction can in its discretion allow any fine to be in installments, impose concurrent and/or consecutive sentences, suspend imposition of sentence as provided in Criminal Procedure Code Rule 27, place a defendant on probation, or reduce the sentence of any defendant at any time with or without conditions. The Court may hold a person in contempt in accordance with Law and Order Code- Jurisdiction and Judiciary, Chapter III, and with Law and Order Code-Rules of Criminal Procedure, Rule 32.

The provisions of any Law and Order Code-Restorative Justice Code adopted by the Lower Brule Sioux Tribal Council supplement and, where authorized, displace the provisions of § 1-2-03 setting forth authorized punishments.

1-2-05. HABITUAL OFFENDER

1. Any person who is convicted four times of the same offense within one year shall be considered a habitual offender, which shall be designated on the judgment, and the person shall be subject to enhanced sentencing to either a Class B or Class A offense in the discretion of the court.
2. Any person who is convicted six times within one year for offenses not similar in nature shall be considered a habitual offender, which shall be designated on the judgment, and the person shall be subject to enhanced sentencing to either a Class B or Class A offense in the discretion of the court.
3. Any person who is convicted of a hate crime shall be subject to enhanced sentencing for the underlying offense to either a Class A, B, or C offense in the discretion of the court.

III. OFFENSES

Offenses Against Persons

1-3A-01. SIMPLE ASSAULT

1. A person who
 - a. Attempts to cause and has the present ability to cause, or purposely, knowingly, or recklessly causes bodily injury to another; or
 - b. Negligently causes bodily injury to another with a deadly weapon; or
 - c. Attempts by a show of force or violence, or by physical menace, or by credible threat to put another in fear of imminent serious bodily injury; or

- d. Recklessly endangers another by an act or omission to act which threatens to cause serious bodily harm to another, whether or not such harm actually occurs; or
 - e. Intentionally causes bodily injury which does not amount to serious bodily injury
- is guilty of simple assault.

- 2. Simple assault is a Class B offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a Class C offense.

1-3A-02. AGGRAVATED ASSAULT

- 1. A person who
 - a. Attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or
 - b. Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or
 - c. Intentionally or knowingly uses a deadly weapon to put another in fear of imminent serious bodily injury.
- is guilty of aggravated assault.
- 2. Aggravated assault is a Class A offense.

1-3A-03. ASSAULT AGAINST LAW ENFORCEMENT OFFICER

Simple Assault, as provided in § 1-3A-01, and Aggravated Assault as provided in § 1-3A-02, if committed against a law enforcement officer, firefighter, ambulance service personnel, corrections officer, or other public officer, which occurred while the officer or employee was engaged in the performance of the officer's or employee's duties, is a Class A offense.

1-3A-04. TERRORISTIC THREATS

1. A person who threatens verbally or in writing to commit any offense involving violence with intent to terrorize another or place such other in fear of imminent serious bodily injury; 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 is guilty of making terroristic threats.
2. Making terroristic threats is a Class B offense, unless serious public inconvenience or the evacuation of a building, place of assembly or facility of public transportation is intended by the actor or actually results, in which case it is a Class A offense.

1-3A- 05. CRIMINAL HOMICIDE

1. A person who purposely, knowingly, recklessly, or negligently causes the death of another human being is guilty of criminal homicide.
2. Criminal homicide is a Class A offense, and if the offense is found by the finder of fact beyond a reasonable doubt to have been committed purposely or knowingly, no suspension of sentence, probation or parole shall be granted, and the maximum fine and incarceration shall be imposed.

1-3A-06. VEHICULAR HOMICIDE

1. A person who, while under the influence of an alcoholic beverage, intoxicating liquor, a controlled substance, or any drug, to a degree which renders the person incapable of safely driving a vehicle, causes the death of another by operating a motor vehicle in a reckless, negligent, or careless manner is guilty of vehicular homicide.
2. The presumptions regarding blood alcohol concentration established in the South Dakota Code are adopted by reference into this Law and Order Code-Criminal Code. Any chemical test administered to a person with consent or after arrest, whether with or without the person's consent, shall be admissible in accordance with the rules of evidence.

3. For the purposes of this section, a motor vehicle is any self-propelled vehicle and includes, but is not limited to, any automobile, truck, van, motorcycle, train, engine, watercraft, aircraft, or snowmobile.
4. Vehicular homicide is a Class A offense.

1-3A-07. CAUSING SUICIDE

1. A person who purposely causes a suicide by force, duress, or deception is guilty of causing a suicide.
2. Causing a suicide is a Class A offense.

1-3A-08. AIDING OR SOLICITING A SUICIDE

1. A person who purposely aids or solicits another to commit suicide is guilty of aiding or soliciting a suicide.
2. Aiding or soliciting a suicide is a Class B offense if the defendant's conduct has caused or contributed substantially to a suicide or an attempted suicide; otherwise, it is a Class C offense.

1-3A-09. THREATENING OR ATTEMPTING SUICIDE

1. A person who:
 - a. states to another in a serious manner that the person plans to commit suicide and takes a step to act on the statement; or
 - b. attempts to physically hurt himself/herself in any wayis guilty of threatening or attempting suicide, which is a Class C offense. The Court may include, as part of the sentence, inpatient or outpatient counseling or treatment as recommended by the Mental Health Professional appointed to evaluate the person.
2. A person charged with threatening or attempting suicide shall be held without bond until evaluated by a Mental Health Professional. If medical treatment is needed, the individual will be treated accordingly.

3. After being evaluated by a Mental Health Professional, the individual may be permitted to post bond and be released if the Mental health Professional determines it is safe to do so and reduces that finding to writing for Tribal Court and Corrections. If the Mental Health Professional determines it is not safe to release the individual, the Mental Health Professional shall immediately reduce that finding to writing for the Tribal Court and Corrections and shall immediately contact the Tribal Prosecutor to request the filing of a Petition for Involuntary Commitment or other appropriate action.

1-3B-10. ROBBERY

A person who, in the course of committing a theft:

- a. Inflicts serious bodily injury upon another person; or
- b. Threatens another with, or purposely puts another person in fear of immediate serious bodily injury; or
- c. Commits or threatens to commit a Class A or Class B offense against another person

is guilty of robbery.

2. An act shall be deemed “in the course of committing a theft” if it occurs during a theft, or in an attempt to commit a theft, or in flight after the attempt or commission of a theft.
3. Robbery is a Class A offense.

1-3A-11. KIDNAPPING

1. A person who unlawfully removes another from that other person’s place of residence or business, or a substantial distance from the vicinity where that other person is usually found, or unlawfully confines another for a substantial period in a place of isolation, with any of the following purposes:

- a. to hold for ransom or reward, or as a shield or hostage; or
- b. to facilitate commission of an offense or flight thereafter; or
- c. to inflict bodily injury on or to terrorize the victim or another; or
- d. to interfere with the performance of any Tribal, governmental or political function

is guilty of kidnapping.

- 2. A removal, restraint, or confinement is unlawful within the meaning of this part if it is accomplished by force, threat, or deception. In the case of any person under the age of 14 or incompetent, if the removal, restraint, or confinement is accomplished without the consent of a parent, guardian, or other person responsible for general supervision of that person's welfare, the conduct is unlawful.
- 3. Kidnapping is a Class A offense.

1-3A-12. FALSE IMPRISONMENT

- 1. A person who knowingly restrains another unlawfully so as to interfere with that other person's liberty is guilty of false imprisonment.
- 2. False imprisonment is a Class C offense unless the detention occurs under circumstances which expose the victim to risk of serious bodily injury in which case it is a Class B offense.

1-3A-13. CUSTODIAL INTERFERENCE

- 1. A person, whether a parent or other person, who:
 - a. Without good cause, takes, entices, conceals, or detains a child under the age of 16 from a parent, guardian or other lawful custodian:
 - 1. Knowing the person has no legal right to do so, and
 - 2. With intent to hold the child for a period substantially longer than any visitation or custody period previously awarded by a

court of competent jurisdiction which has given another person visitation or custody rights, and without good cause, detains or conceals the child with intent to deprive the other person of lawful visitation or custody rights, or

- b. Without good cause the person takes, entices or detains an incompetent or other person who has been committed by authority of law to the custody of another person or institution from the other person or institution, knowing there is no legal right to do so

is guilty of custodial interference.

- 2. Custodial interference is a Class C offense.

1-3A-14. RAPE

- 1. Rape is an act of sexual penetration accomplished with any person under any one or more of the following circumstances:
 - a. Through the use of force, coercion or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution; or
 - b. Where the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or
 - c. Where the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or because of hypnosis, administered by or with the privity of the accused; or
 - d. Where the victim is less than 16 years of age.
- 2. Any person who commits rape is guilty of a Class A offense.

1-3A-15. SEXUAL PENETRATION DEFINED

Sexual penetration means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal opening of another person's body. Practitioners

of the healing arts lawfully practicing within the scope of their practice are excepted from the provisions of this section.

1-3A-16. SEXUAL CONTACT DEFINED

As used in this Code, the term "sexual contact", means any touching, not amounting to rape, of the breast of the female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of either party.

1-3A-17. SEXUAL CONTACT WITH A MINOR

Any person aged 16 years or more, who knowingly engages in sexual contact with any minor person under the age of 16 years other than his/her spouse, is guilty of sexual contact with a minor.

Sexual contact with a minor is a Class C crime if the actor is less than three years older than the minor. If the actor is three years or more older than the minor, then sexual contact with a minor is a Class A crime.

1-3A-18. CHILD PORNOGRAPHY-POSSESSION, DISTRIBUTION, OR VIEWING

1. Possessing depictions of a minor engaged in sexually explicit conduct.

a. A person commits the crime of possessing depictions of a minor engaged in sexually explicit conduct when he or she knowingly possesses, creates, develops, duplicates, publishes, prints, disseminates, exchanges, finances, or sells a visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct, as defined below.

b. Possessing depictions of a minor engaged in sexually explicit conduct is a Class B offense. Each visual or printed matter that violates this section constitutes a separate offense.

2. Distribution of depictions of minor engaged in sexually explicit conduct.

- a. A person commits the crime of distribution of child pornography by sending into, bringing into, or distributing to another while within the Lower Brule Reservation depictions of a minor engaged in sexually explicit conduct when he or she knowingly sends or causes to be sent, or brings or causes to be brought onto, or distributes while within the Reservation, a visual or printed matter that depicts a minor engaged in sexually explicit conduct, as defined below.
 - b. Sending, bringing, or distributing depictions of a minor engaged in sexually explicit conduct is a Class B offense. Each visual or printed matter that violates this section constitutes a separate offense.
- 3. Viewing depictions of a minor engaged in sexually explicit conduct.
 - a. A person who intentionally views over the Internet visual or printed matter depicting a minor engaged in sexually explicit conduct is guilty of viewing depictions of a minor engaged in sexually explicit conduct.
 - b. Viewing depictions of a minor engaged in sexually explicit conduct is a Class C offense.
 - c. For the purposes of determining whether a person intentionally viewed over the Internet a visual or printed matter depicting a minor engaged in sexually explicit conduct, the trier of fact shall consider the title, text, and content of the visual or printed matter, as well as the Internet history, search terms, thumbnail images, downloading activity, expert computer forensic testimony, number of visual or printed materials depicting minors engaged in sexually explicit conduct, defendant's access to and control over the electronic device and its contents upon which the visual or printed matter was found, or any other relevant evidence. The prosecutor must prove beyond a reasonable doubt that the viewing was initiated by the user of the computer where the viewing occurred.
 - d. For the purposes of this section, each separate Internet session of intentionally viewing over the Internet visual or printed matter depicting a minor engaged in sexually explicit conduct constitutes a separate offense.
 - e. An "Internet session" means a period of time during which an Internet user, using a specific Internet protocol address, visits or is logged into an Internet site for an uninterrupted period of time.

4. For the purposes of this section “sexually explicit conduct” means actual or simulated:

- a. Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;
- b. Penetration of the vagina or rectum by any object;
- c. Masturbation;
- d. Sadomasochistic abuse;
- e. Defecation or urination for the purpose of sexual stimulation of the viewer;
- f. Depiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer. For the purposes of this subsection, it is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it; and
- g. Touching of a person’s clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

1-3A-19. INDECENT EXPOSURE

A person who, for the purpose of arousing or gratifying the sexual desires of any person exposes his genitals in such a fashion that they might reasonably be seen by the public is guilty of indecent exposure.

Indecent exposure is a Class C offense.

1-3A-20. INCEST

A person who knowingly cohabits or has sexual penetration or sexual contact with any person he/she knows to be an ancestor or descendent, brother, sister, aunt, uncle, nephew, niece or first cousin, any of which are either whole or half blood, and without

regard to legitimacy or adoption, or with a step- parent or stepchild, while such relationship exists is guilty of incest. This does not preclude prosecution for any applicable offenses at §§ 1-3A-13 through -29 of this code.

Incest is a Class B offense.

1-3A-21. KNOWLEDGE OF AGE OF VICTIM IRRELEVANT

Whenever an element of any crime in this Code depends upon the age of the victim being less than 16 years, it is no defense that the actor did not know the child's age or reasonably believed the child to be older than age 16.

1-3A-22. HUMAN TRAFFICKING

See Lower Brule Sioux Code Governing Domestic Violence and Related Offenses—Special Tribal Criminal Jurisdiction.

1-3A-23. PROSTITUTION

Any person who knowingly and willingly:

1. Is an inmate or resident of a house of prostitution or otherwise engages in sexual penetration for a fee; or
2. Loiters in or within view of a public place for the purpose of being hired to engage in sexual penetration; or
3. Engages in or offers or agrees to engage in any sexual penetration with another person for a fee;

is guilty of prostitution. A minor who has not knowingly and willingly engaged in prostitution shall not be prosecuted under this section.

Prostitution is a Class C offense.

1-3A-24. PIMPING

Any person who:

1. Solicits another person to patronize a prostitute; or

2. Procures or attempts to procure a prostitute for another; or
3. Transports a person into the Lower Brule Sioux Reservation to promote that person's engaging in prostitution or procures or pays for said transportation; or
4. Owns, controls, manages, supervises, or otherwise keeps alone or in association with another, a house of prostitution or a prostitution business, or leases or otherwise permits a place under his/her control to be used for prostitution or the promotion of prostitution by others; or
5. Solicits, receives, or agrees to receive any benefit for doing or agreeing to do anything forbidden by this section;

is guilty of pimping.

Pimping is a Class B crime.

1-3A-25. PROCURING, PROMOTING, OR PATRONIZING PROSTITUTION

Any person who:

1. Encourages, induces, procures or otherwise purposely causes another to become or remain a prostitute; or
2. Promotes prostitution of his/her spouse, child, ward or any person for whose care, protection or support the person is responsible; or
3. Pays or offers to pay another person a fee for the purpose of engaging in sexual penetration; or
4. Enters or remains in a house of prostitution for the purpose of engaging in sexual penetration

is guilty of a violation of this section.

Procuring, promoting, or patronizing prostitution is a Class B crime.

1-3A-26. CHILD PROSTITUTION

See Lower Brule Sioux Tribe Code Governing Domestic Violence and Related Offenses—
Special Tribal Criminal Jurisdiction.

1-3A-27. OPERATING A HOUSE OF PROSTITUTION

A house of prostitution is any place where sexual penetration, as defined in the Lower Brule Sioux Law and Order Code-Criminal Code § 1-3A-14 or promotion of sexual penetration, is regularly carried on by one or more persons for a fee, under the control, management, or supervision of another.

On the issue of whether a place is house of prostitution, the following shall be admissible into evidence: its general reputation, the reputation of the persons who reside in or frequent the place, and the frequency, timing or duration of visits by non-residents.

Operating a House of Prostitution is punishable as a Class B offense.

1-3A-28. SPOUSAL PRIVILEGE NOT AVAILABLE

The spousal testimony evidentiary privilege may not be claimed by any person who is the accused or a witness during a prosecution under Lower Brule Sioux Law and Order Code-Criminal Code 1-3A and all of its subsections.

1-3A-29. SPREADING A VENEREAL DISEASE

1. Any person who, knowing or having reason to believe he/she is infected with a venereal disease, shall infect another with said venereal disease is guilty of spreading venereal disease.
2. Spreading venereal disease to another is a Class D crime. The Lower Brule Sioux Tribal Court shall, upon conviction, have the power to order the medical examination and treatment of the convicted person and may also order and compel the convicted person to disclose confidentially to the appropriate medical authorities the identities of other persons who may have been exposed to venereal disease by the convicted person.

1-3A-30. CRIMINAL NONSUPPORT

1. A person who, without just cause, and possessing the means to do so, fails to provide for the support of his/her spouse, child under 18, or other dependent when such persons or any of them are in needy circumstance is guilty of criminal nonsupport.
2. Child includes a child born out of wedlock whose paternity has been admitted by the actor or been established in a civil suit.
3. In a prosecution under this section, it is no defense that the person to be supported received necessary support from a source other than the defendant.
4. Criminal nonsupport is a Class C offense.

1-3A-31. ENDANGERING WELFARE OF CHILD

1. A person who is a parent, guardian, or other person supervising the welfare of a child under the age of 18, and knowingly endangers the child's welfare by violating a duty of care, protection or support or by intentionally leaving or abandoning a child in any manner which threatens serious harm to the physical, emotional, or mental well-being of the child is guilty of endangering the welfare of a child.
2. Endangering the welfare of a child is a Class B offense.

1-3A-32. FAILURE TO SEND CHILD TO SCHOOL

1. A person who, being a parent, guardian or other person having a child under 18 in his/her custody, without good cause, neglects or refuses to send such child to school or if such child is found to be habitually tardy or late to class or intentionally skips class is guilty of failure to send child to school.
2. Failure to send child to school is a Class D offense.

1-3A-33. HARASSMENT

1. A person who engages in a knowing and willful pattern of conduct directed at a specific person, either directly or through a third party, which seriously alarms, annoys, torments, or terrorizes the person, is guilty of harassment. A pattern requires at least two acts within two years.
2. Actions which may constitute harassment include but are not limited to:
 - a. Vandalism, defined as willful or malicious destruction of private property;
 - b. Making an annoying or threatening telephone call, or sending an annoying or threatening text message, email, or any other form of electronic message or communication without purpose of legitimate communication;
 - c. Following the victim or other violation of an order for protection;
 - d. Assault;
 - e. Sending an unwanted letter;
 - f. Sending an unwanted message or threat through a third party;
 - g. Appearing at a victim's home or workplace;
 - h. Attempting to obtain private information about the victim through another;
 - i. Leaving an unwanted gift for the victim;
 - j. Disabling or otherwise tampering with the victim's vehicle;
 - k. Taking mail from the victim's mailbox;
 - l. Entering the victim's home or place of residence, whether or not the victim is present;
 - m. Parking near or driving by the victim's residence or workplace for no legitimate reason;
 - n. Using an agency or institution as a means of retaliation against the victim by initiating an investigation, restriction or sanction against the victim.
3. Harassment is a Class C offense.

1-3A-34. VIOLATION OF PRIVACY

1. A person who, except as authorized by law:

- a. Trespasses on property with intent to subject anyone to eavesdropping or other surveillance in a private place; or
- b. Installs in any private place, without the consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in such place; or uses any such unauthorized installation; or
- c. Installs or uses outside of any private place any device for hearing, recording, amplifying, or broadcasting sounds originating in such place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there; or
- d. Intercepts without consent of the sender or receiver a message by telephone, telegraph, letter or other means of communication privately; but this sub-paragraph does not apply to:
 - (1) Overhearing of messages through a regularly installed instrument on a telephone party line or extensions; or
 - (2) Interception by the telephone company or subscriber incident to enforcement of regulations limiting use of the facilities or to other normal operation or use; or
- e. Divulges without the consent of the sender or receiver the existence or contents of any such message if the actor knows that the message was illegally intercepted, or if the person learned of the message in the course of employment with an agency engaged in transmitting it is guilty of violation of privacy.

2. Definitions:

- a. "Eavesdrop" means to overhear, record, amplify, or transmit any part of an oral or written communication of others without the consent of at least one party thereto by means of any electrical, mechanical or other device.

- b. "Private place" means a place where one can reasonably expect to be safe from casual or hostile intrusion or surveillance.

3. Violation of privacy is a Class D offense.

1-3A-35. POSSESSION OF AN ALCOHOLIC BEVERAGE BY A PERSON UNDER AGE 21

1. A person who, being under the age of 21 years old:

- a. Possesses or consumes any beer, wine, ale, whisky, or other alcoholic beverage; or
- b. Misrepresents his/her age for the purpose of buying or otherwise obtaining an alcoholic beverage; or
- c. Appears in a public or private place while under the influence of an intoxicating beverage in any degree

is guilty of possession of an alcoholic beverage by a person under age 21.

2. Possession of an alcoholic beverage by a person under age 21 is a Class D offense.

3. Exceptions-- It is a Class D offense to possess or consume any alcoholic beverage by any person under the age of 21 years unless:

- a. It is done in the immediate presence of a parent or guardian or spouse, who is at least twenty-one years of age, while not on the premises of an establishment licensed for the retail sale of alcoholic beverages or at a special event for which an alcoholic beverage license has been issued; or
- b. It is done by prescription or direction of a duly licensed practitioner or nurse of the healing arts for medicinal purposes; or
- c. It is done as part of a religious ceremony and is distributed by a person authorized as part of the religious ceremony for sacramental purposes.

4. No person may be arrested or prosecuted for any offense of underage consumption, open container, or public intoxication, arising out of underage consumption of alcohol, if that person contacts any law enforcement or emergency medical services and reports that a person is in need of emergency medical assistance due to alcohol consumption and that person:
 - a. assists the person in need of emergency medical assistance until assistance arrives; and
 - b. remains and cooperates with medical assistance and law enforcement personnel on the scene.
5. No person under the age of twenty-one years may be prosecuted for any offense of underage consumption, open container, or public intoxication, arising out of underage consumption of alcohol, if that person contacts law enforcement or emergency medical services and reports that he or she is in need of medical assistance due to alcohol consumption and that person remains and cooperates with medical assistance and law enforcement personnel on the scene.

1-3A-36. CONTRIBUTING TO THE DELINQUENCY OF A MINOR

1. A person who:
 - a. knowingly or recklessly sells or gives to or otherwise makes beer, liquor, wine or other alcoholic beverages available to a person under the age of 21 years, or
 - b. knowingly or recklessly, by act or omission, encourages, causes or contributes to the delinquency of a minor under the age of 18 years oldis guilty of contributing to the delinquency of a minor.
2. Contributing to the delinquency of a minor child is a Class C offense.
3. Exceptions-- It is a Class C offense to sell or give for use as a beverage any alcoholic beverage to any person under the age of 21 years unless:
 - a. It is done in the immediate presence of a parent or guardian or spouse, who is at least twenty-one years of age, while not on the

premises of an establishment licensed for the retail sale of alcoholic beverages or at a special event for which an alcoholic beverage license has been issued; or

- b. It is done by prescription or direction of a duly licensed practitioner or nurse of the healing arts for medicinal purposes; or
- c. It is done as part of a religious ceremony and is distributed by a person authorized as part of the religious ceremony for sacramental purpose.

- 4. Reasonable attempt to investigate age. Any person charged under this section may offer evidence, as a defense, that the person made a reasonable attempt to investigate the age of the minor by examining an age-bearing identification document that would have appeared valid to a reasonable person.

1-3A- 37. ELDERLY AND VULNERABLE ADULT ABUSE

- 1. Definitions. A person who has attained the age of 55 is an elder. A person eighteen years of age or older who has a condition of intellectual disability, infirmities of aging as manifested by organic brain damage, advanced age, or other physical disfunction to the extent the person is unable to protect himself or herself from abuse or to provide for his or her own care is a vulnerable adult.
- 2. A person who willfully abuses a person who has attained the age of 55 years of age is guilty of elder abuse. A person who willfully abuses a vulnerable adult is guilty of abuse of a vulnerable adult.
- 3. Abuse means the willful infliction of physical injury or pain, sexual abuse, mental anguish, unreasonable confinement, intimidation, financial exploitation, or the willful deprivation by a caretaker of the basic necessities of life such as, but not limited to food, shelter, clothing and personal care which are necessary to prevent physical harm, mental anguish, mental illness or any other type of maltreatment.
- 4. Penalties: Abuse or neglect of elder or vulnerable adult –

Any person who physically abuses or neglects an elder or vulnerable adult in a manner which constitutes aggravated assault is guilty of a Class A offense. If the abuse of the elder or vulnerable adult does not constitute aggravated assault, it is a Class B offense.

Any person who emotionally or psychologically abuses an elder or vulnerable adult as is guilty of a Class B offense.

5. Abuse through theft by exploitation—

Any person who, having assumed the duty voluntarily, by written contract, by receipt of payment for care, or by order of a court to provide for the support of an elder or a vulnerable adult, and having been entrusted with the property of that elder or vulnerable adult, with intent to defraud, appropriates such property to a use or purpose not in the due and lawful execution of that person's trust, is guilty of abuse through theft by exploitation.

Abuse through theft by exploitation is punishable as a Class B offense.

6. Abuse through Financial exploitation

Any person who uses an elder's or vulnerable adult's resources to the disadvantage of that elder or vulnerable adult or for the profit or advantage of a person other than that elder or vulnerable adult is guilty of abuse through financial exploitation.

Abuse through financial exploitation is a Class C offense.

1-3A-38. STALKING

Stalking is a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear.

Stalking is a Class C offense.

Offenses Against Property

1-3B-01. ARSON

1. A person who starts a fire or causes an explosion with the purpose of:

- a. Destroying a building or occupied structure of another; or
- b. Destroying or damaging any property, whether the person's own or another's, to collect insurance for such loss

is guilty of arson.

2. Definitions:

- a. The term "occupied structure" includes a ship, trailer, sleeping car, airplane, vehicle, structure or place adapted for overnight accommodations of persons or for carrying on business therein, whether or not a person is actually present.
- b. Property is that of another, for the purposes of this section, if anyone other than the actor has a possessory or proprietary interest therein. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an occupied structure of another.
- c. Arson is a Class A offense.

1-3B-02. RECKLESS BURNING

1. A person who:

- a. Recklessly starts a fire or causes an explosion which endangers human life; or
- b. Damages property of another by reckless use of fire or reckless causing of an explosion; or
- c. 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

is guilty of reckless burning.

2. Reckless burning is a Class C offense.

1-3B-03. CAUSING A CATASTROPHE

1. A person who, by explosion; fire; flood; avalanche; collapse of a building; release of a poison gas, radioactive material, or other harmful or destructive force or substance; or by another other means, causes actual or potentially widespread injury to persons or property, is guilty of causing a catastrophe.
2. Causing a catastrophe is a Class A offense if done purposely or knowingly and a Class B offense if done recklessly.

1-3B-04. CRIMINAL MISCHIEF

1. A person who:
 - a. Under circumstances not amounting to arson, damages or destroys property with the intention of defrauding an insurer; or
 - b. Intentionally and unlawfully tampers with the property of another and thereby
 - (1) Recklessly endangers human life; or
 - (2) Recklessly causes or threatens a substantial interruption or impairment of any public utility service; or
 - c. Intentionally damages, defaces, or destroys the livestock, domestic animal or other property of another; or
 - d. Purposely or recklessly shoots or propels a missile or other object against a motor vehicle, bus, airplane, boat, locomotive, or train, whether moving or standingis guilty of criminal mischief.
2. Criminal mischief is a Class C offense unless the actor's conduct causes pecuniary loss of less than \$100.00 in which case it is a Class D offense.

1-3B-05. BURGLARY

1. A person who enters or remains unlawfully in a building or occupied structure of another, or separately secured or occupied portion thereof, with purpose to commit a Class A or B offense therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter is guilty of burglary. It is an affirmative defense to a prosecution for burglary that the building or structure was abandoned.
2. Definitions:
 - a. An “occupied structure” is any ship, trailer, sleeping car, airplane, vehicle, structure, or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.
 - b. “Enter” means an intrusion of any part of the body, or intrusion of any physical object under control of the actor.
3. Burglary is a Class A offense.

1-3B-06. UNLAWFUL ENTRY OF OR REMAINING IN A VEHICLE

1. A person who unlawfully enters or unlawfully remains in the vehicle of another with intent to commit a Class A or B offense therein is guilty of unlawful entry of or remaining in a vehicle.
2. Burglary of a vehicle is a Class B offense.

1-3B-07. AGGRAVATED TRESPASS

1. A person who enters or remains unlawfully on property on which he/she is not otherwise privileged to enter or remain, and:
 - a. Accomplishes such entry by an act of force or violence or the use of a key or similar device which provides entry and which device the actor is not authorized or privileged to use for such purpose; or
 - b. Intends to cause or causes annoyance or injury to any person or property, or violates the hunting and fishing laws; or

- c. Intends to commit or commits an offense thereon; or
- d. Is reckless as to whether the actor's presence will cause fear for the safety of another

is guilty of aggravated trespass.

- 2. Aggravated trespass is a Class C offense.

1-3B-08. SIMPLE TRESPASS

- 1. A person who, knowing the entry or presence is unlawful, enters or remains on property as to which notice against entry is given by:
 - a. Personal communication to the actor by the owner or someone with authority to act for the owner; or
 - b. Fencing or other enclosure obviously designed to exclude intruders; or
 - c. Posting of signs reasonably likely to come to the attention of intruders

is guilty of simple trespass.

- 2. It is an affirmative defense to simple trespass that:
 - a. The property was open to the public when the actor entered or remained and he/she had not been notified to leave or not enter; or
 - b. The actor's conduct did not substantially interfere with the owner's use of the property and the actor left the property when asked to do so.
- 3. Simple trespass is a Class D offense.

1-3B-09. CONSOLIDATION OF THEFT OFFENSES – GENERAL PROVISIONS

1. Conduct denominated in §§ 1-3B-11 through 1-3B-19 constitutes a single offense embracing the separate offenses heretofore known as larceny, embezzlement, false pretenses, extortion, blackmail, fraudulent conversion, receiving stolen property, and the like. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under the above provisions, notwithstanding a different name is charged in the complaint. A continuance or other appropriate relief should be granted where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.
2. It is an affirmative defense to a prosecution for theft that the actor:
 - a. Acted under an honest claim of right to the property or service involved or that the actor had a right to acquire or dispose of it as he/she did; or
 - b. Obtained or exercised control over the property or service honestly and reasonably believing that the owner, if present, would have consented.
3. It is no defense that:
 - a. The theft was from the actor's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together or if a court of competent jurisdiction has entered an order awarding the property to the actor's spouse; or
 - b. The actor has an interest in the property or service stolen if another person also has an interest that the actor is not entitled to infringe upon.
4. Possession of property recently stolen, when no satisfactory explanation of such possession is made, shall be deemed prima facie evidence that the person in possession stole the property.

1-3B-10. GRADING OF THEFT OFFENSES

1. Theft of property or services as provided in this part shall be punishable as follows:
 - a. If the value of the property or services involved is more than \$1000.00, the offense shall be a Class B offense;
 - b. If the value of the property or services involved is \$100.00 or more, but less than \$1000.00, the offense shall be a Class C offense;
 - c. If the value of the property or services involved is less than \$100.00, the offense shall be a Class D offense.
2. If no evidence as to the value of the property or services involved is presented and the value of such is not obvious without presentation of such evidence, and if it otherwise is proved that a theft offense has been committed, the offense shall be a Class D offense.

1-3B-11. THEFT OF PROPERTY

A person who obtains or exercises unauthorized control over property of another with the intent to permanently deprive the other of the property is guilty of theft.

1-3B-12. THEFT BY DECEPTION

1. A person who obtains or exercises unauthorized control over property of another by deception and with the intent to permanently deprive the other of the property is guilty of theft by deception.
2. A person deceives if the person purposely:
 - a. Creates or reinforces a false impression, including a false impression as to law, value, intention, or other state of mind; or
 - b. Prevents another from acquiring information which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom the deceiver stands in a fiduciary or confidential relationship; or

- c. Fails to disclose a lien, adverse claim or other legal impediment to the enjoyment of property which the deceiver transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid or is not a matter of official record.
- 3. The term “deceive” does not, however, include matters having no pecuniary significance, or mere puffing by statements unlikely to deceive ordinary persons in the group addressed.

1-3B-13. IDENTITY THEFT

- 1. Any person who, without the authorization or permission of another person or the tribal, federal or state government and with the intent to deceive or defraud:

- a. Obtains, possesses, transfers, uses, attempts to obtain, or records identifying information not lawfully issued for that person's use; or
 - b. Accesses or attempts to access the financial resources of that person through the use of identifying information;

commits the crime of identity theft. Identity theft committed pursuant to this section is a Class B offense.

- 2. Identifying information defined. For the purposes of this section, identifying information includes:
 - a. Birth certificate or passport information;
 - b. Driver's license numbers or tribal identification card information;
 - c. Social security or other taxpayer identification numbers;
 - d. Checking account numbers;
 - e. Savings account numbers;
 - f. Credit card numbers;

- g. Electronic Benefit Transfer (EBT) card numbers;
- h. Debit card numbers;
- i. Personal identification numbers, passwords, or challenge questions;
- j. User names or identifications;
- k. Biometric data; or
- l. Any other numbers, documents, or information which can be used to access another person's financial resources.

1-3B-14. UNAUTHORIZED USE OF SCANNING DEVICE ON PAYMENT CARD

1. Definitions--Terms used in §§ 1-3B-14(1) through (4), inclusive, mean:

- a. "Reencoder," any electronic device that places encoded information from the magnetic strip or stripe of a payment card or a computer chip embedded in a payment card onto the magnetic strip or stripe or computer chip of a different payment card;
- b. "Scanning device," any scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe or on a computer chip of a payment card.

2. Unauthorized use of scanning device on payment card.

A person who directly or indirectly uses a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card or encoded on a chip embedded on a payment card without the permission of the authorized user of the payment card, the issuer of the authorized user's payment card, or a merchant, is guilty of unauthorized use of a scanning device on a payment card.

Unauthorized use of a scanning device on a payment card is a Class B offense.

3. Unauthorized use of reencoder on payment card.

A person who directly or indirectly uses a reencoder to place information encoded on the magnetic strip or stripe of a payment card or encoded on a computer chip embedded on a payment card onto the magnetic strip or stripe or computer chip of a different payment card without the permission of the authorized user of the payment card from which the information is being reencoded, the issuer of the authorized user's payment card, or a merchant, is guilty of unauthorized use of a reencoder on a payment card, which is a Class B offense.

4. Ownership or possession of scanning device or reencoder with intent to obtain or alter payment card information without permission.

- a. A person who owns or possesses a scanning device or a reencoder with the intent to use the scanning device or reencoder to obtain or alter information encoded or embedded on a payment card without the permission of the authorized user of the payment card, the issuer of the authorized user's payment card, or a merchant is guilty of a Class B offense.
- b. A person who owns or possesses a scanning device or reencoder with knowledge that a person other than an authorized user, the issuer of the authorized user's payment card, or a merchant intends to use the scanning device or reencoder to obtain information encoded or embedded on a payment card without the permission of the authorized user, the issuer of the authorized user's payment card, or any merchant is guilty of a Class B offense.

1-3B-15. THEFT BY EXTORTION

1. A person who obtains or exercises control over the property of another by extortion and with a purpose to permanently deprive the other of the property is guilty of theft by extortion.
2. Extortion occurs when a person threatens to:

- a. Inflict bodily injury on anyone or commit any other criminal offense;
or
 - b. Accuse anyone of a criminal offense; or
 - c. Expose any secret tending to subject any person to hatred, contempt, or ridicule, or to impair that person's credit or business reputation; or
 - d. Take or withhold action as an official, or cause an official to take or withhold action; or
 - e. Bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or
 - f. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
 - g. Inflict any other harm which would not benefit the actor but which would substantially harm any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.
3. It is an affirmative defense to a prosecution based on paragraphs b., c., or d. of subsection 2. above, that the property obtained by threat of action, exposure, lawsuit, or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit, or other official action relates, or as compensation for property or lawful services.

1-3B-16. THEFT OF PROPERTY LOST, MISLAID OR DELIVERED BY MISTAKE

A person who comes into control or possession of property of another that he/she knows or reasonably suspects has been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, and with purpose to deprive the owner thereof, fails to take reasonable measures to restore the property to a person entitled to have it, is guilty of theft of property lost, mislaid or delivered by mistake.

1-3B-17. RECEIVING STOLEN PROPERTY

1. A person who receives, retains, or disposes of the property of another knowing that it has been stolen or who conceals, sells, withholds or aids in concealing, selling, or withholding any such property from the owner, knowing the property to be stolen, with a purpose to permanently deprive the owner thereof, is guilty of receiving stolen property.
2. The requisite knowledge or belief is presumed, and may be rebutted, in the case of a person who:
 - a. Is found in possession or control of other property stolen on a separate occasion; or
 - b. Has received stolen property in another transaction within the year preceding the transaction charged if proved to a reasonable probability; or
 - c. Being a dealer in property of the sort received, acquires it for a consideration which the person knows or should know is far below its reasonable value.
3. As used in this section, “receives” means acquiring possession, control of title, or lending on the security of the property; “dealer” means a person in the business of buying or selling goods.

1-3B-18. THEFT OF SERVICES

1. A person who:
 - a. obtains services which he/she knows are available only for compensation by deception, threat, force, or any other means designed to avoid the due payment therefore; or
 - b. having control over the disposition of services of others, to which he/she is not entitled, diverts such services to his/her own benefit or to the benefit of another not entitled thereto,is guilty of theft of services.

2. Where compensation for services is ordinarily paid immediately upon the rendering of such service, refusal to pay or absconding without payment or offer to pay gives rise to a rebuttable presumption that the service was obtained by deception as to the intent to pay.
3. "Services" includes, but is not limited to, labor; professional service; telephone or other public service; accommodation in hotels, restaurants or elsewhere; admission to a place for which a charge for admission is made; the use of vehicles or other moveable or real property.

1-3B-19. THEFT BY FAILURE TO MAKE REQUIRED DISPOSITION OF FUNDS RECEIVED

1. A person who obtains property from anyone, or personal services from an employee, upon agreement, or subject to a known legal obligation to make a specified payment for other disposition to a third person, whether from the property or its proceeds or from the person's own property in an equivalent amount, and deals with the property as his/her own and fails to make the required payment or disposition, is guilty of theft by failure to make required disposition of funds received.
2. It is no defense that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition.
3. An officer or employee of the Tribe, government, or of a financial institution is presumed:
 - a. to know of any legal obligation relevant to his/her liability under this section; and
 - b. to have dealt with the property as his/her own, if the officer or employee fails to pay on account upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

Any presumption arising under this section is rebuttable.

1-3B-20. UNAUTHORIZED USE OF A VEHICLE

1. A person who operates another's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without consent of the owner is guilty of unauthorized use of a vehicle.
2. It is an affirmative defense to prosecution of this offense that the actor reasonably believed that the owner would have consented to the operation had the owner known of it.
3. Unauthorized use of a vehicle is a Class D offense.

1-3B-21. UNLAWFUL DEALING WITH PROPERTY BY A FIDUCIARY

1. A person who deals with the property that has been entrusted to him/her as a fiduciary, or property of the Tribe or government or of a financial institution, in a manner which the person knows is a violation of his/her duty and which involves a substantial risk of loss to the owner or to a person for whose benefit the property was entrusted is guilty of unlawful dealing with property by a fiduciary.
2. As used in this section, "fiduciary" includes a trustee, guardian, executor, administrator, receiver, or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.
3. Unlawful dealing with property by a fiduciary is a Class C offense.

1-3B-22. DEFINITIONS APPLICABLE TO SECTIONS 1-3B-01 through 1-3B-21

1. "Property" means anything of value, including real estate, tangible and intangible personal property, contract rights, choses-in-action and other interest in or claims to wealth; admission or transportation tickets; captured or domestic animals; food and drink; commodities of a public utility such as water, gas or electricity; trade or business secrets which the owner thereof intends to be available only to persons selected by the owner; or any other right, object, labor or service valuable to the owner thereof.
2. "Property of another" includes property in which any person, company, group, or organization other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the other person might

be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

3. "Obtain" means, in relation to property, to bring about a transfer or purported transfer of possession or of some other legally recognized interest in property, whether to the obtainer or another; in relation to labor or services, to secure performance thereof; and in relation to a trade or business secret, to make any facsimile, replica, photograph, or other reproduction thereof.
4. "Purpose to deprive" means to have the conscious object:
 - a. To withhold property permanently or for so extended a period or to use under such circumstances that a substantial portion of its economic value, or the use and benefit thereof would be lost; or
 - b. To restore the property only upon payment of a reward or other compensation; or
 - c. To dispose of the property under circumstances that make it unlikely that the owner will recover it unharmed.

1-3B-23. FORGERY

1. A person who, with purpose to defraud or injure anyone, or with knowledge that he/she is facilitating a fraud or injury to be perpetrated by anyone:
 - a. Alters any writing of another without the other's authorization; or
 - b. Makes, completes, executes, authenticates, issues, or transfers any writing so it purports to be that of another who did not authorize that act, or to have been executed at a time or place in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or
 - c. Utters or attempts to circulate as genuine any writing which the person knows to be forged in the manner specified in this section

is guilty of forgery.

2. "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.
3. Forgery is a Class B offense if the writing purports to be money, securities, postage or revenue stamps, or other instruments issued by the Tribe or the government, a will, deed, contract, release, commercial instrument, or other document evidencing, creating, transferring, altering, terminating, or otherwise affecting legal relations. Otherwise, forgery is a Class C offense.

1-3B-24. CRIMINAL SIMULATION

1. A person who, with purpose to defraud anyone or with knowledge that the person is facilitating a fraud to be perpetuated by anyone, makes, alters, utters, or attempts to circulate or sell as genuine any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess, is guilty of criminal simulation.
2. Criminal simulation is a Class C offense.

1-3B-25. FRAUDULENT HANDLING OF RECORDABLE INSTRUMENTS

1. A person who, with purpose to deceive or injure anyone, destroys, removes, or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording or knowingly records a false or forged instrument, is guilty of fraudulent handling of recordable instruments.
2. Fraudulent handling of recordable instruments is a Class C offense.

1-3B-26. TAMPERING WITH A RECORD

1. A person who, knowing that he/she has no privilege to do so, falsifies, destroys, removes, or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing is guilty of tampering with a record.
2. Tampering with a record is a Class C offense.

1-3B-27. THEFT BY INSUFFICIENT FUNDS CHECK

1. A person who issues or passes a check or similar sight order for payment of money, for the purpose of obtaining any money, property or other thing of value or paying for any services, rent, wages, or salary, knowing or believing that it will not be honored by the drawee is guilty of theft by insufficient funds check.
2. For the purposes of this section as well as in any prosecution for theft committed by means of an insufficient funds check, an issuer is presumed to know that the check or order (other than a post-dated check or order) would not be paid if:
 - a. The issuer had no account with the drawee at the time the check or order was issued; or
 - b. Payment was refused by the drawee for lack of funds, upon presentation for payment within 30 days of issue, and the issuer thereafter failed or was intentionally unavailable to make payment within 10 days after such refusal and receipt of notice thereof.
3. Theft by insufficient funds check is a Class B offense if the check or a series of checks issued over a period not exceeding six months exceeds \$1000.00; otherwise it is a Class-C offense.

1-3B-28. FRAUDULENT USE OF CREDIT CARD

1. A person who uses a credit card for the purpose of obtaining property or services with knowledge that:
 - a. The card is stolen; or
 - b. The card has been revoked or cancelled; or
 - c. For any other reason the person's use of the credit card is unauthorized by either the issuer or the person to whom the card has been issued

is guilty of fraudulent use of a credit card.

2. "Credit card" means a writing purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.
3. Fraudulent use of a credit card is a Class B offense if the value of the property or services secured or sought to be secured by means of the credit card exceeds \$1000.00; otherwise, fraudulent use of a credit card is a Class C offense.

1-3B-29. DECEPTIVE BUSINESS PRACTICE

1. A person who, in the course of business:
 - a. Uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or
 - b. Sells, offers, or exposes for sale, or delivers less than the represented quality or quantity of any commodity or services; or
 - c. Takes or attempts to take more than the represented quantity of any commodity or service when as a buyer he/she furnishes the weight or measure; or
 - d. Sells, offers, or exposes for sale adulterated or mislabeled commodities:
 - (1) "Adulterated" means varying from the standard of composition or quality prescribed by law or commercial usage.
 - (2) "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or commercial usage; or
 - e. Makes a false or misleading statement in any advertisement addressed to the public or a substantial segment thereof for the purpose of promoting the purchase or sale of property or services; or
 - f. Makes a false or misleading statement for the purpose of obtaining property or credit; or

- g. Makes a false or misleading written statement for the purpose of promoting the sale of securities, or omits information required by law to be disclosed in written documents relating to securities

is guilty of deceptive business practice.

- 2. It is an affirmative defense to prosecution under this section if the defendant proves by a preponderance of the evidence that the conduct charged was not knowingly or recklessly deceptive.
- 3. Deceptive business practice is a Class C offense.

1-3B-30. COMMERCIAL BRIBERY

- 1. A person who:
 - a. solicits, accepts, or agrees to accept any benefits as consideration for knowingly violating or agreeing to violate any duty of fidelity to which the person is subject as agent or employee of another; or as trustee, guardian, or other fiduciary; or as lawyer, physician, accountant, appraiser, or other participant in the direction of affairs of an incorporated or unincorporated association; or as arbitrator or other purportedly disinterested adjudicator or referee; or
 - b. being one who holds himself/herself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism, confers or offers or agrees to confer any benefits the acceptance of which would be criminal under this section

is guilty of commercial bribery.

- 2. Commercial bribery is a Class C offense.

1-3B-31. RIGGING A CONTEST

- 1. A person who:
 - a. with a purpose to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages purporting to govern it:

(1) Confers or offers or agrees to confer any benefit upon, or threatens any injury to a participant, official, or other person associated with the contest or exhibition; or

(2) Tampers with any person, animal, or thing; or

b. knowingly solicits, accepts, or agrees to accept any benefit the giving of which would be criminal under this section; or

c. knowingly engages in, sponsors, produces, judges, or otherwise participates in a publicly exhibited contest knowing that the contest is not being conducted in compliance with the rules and usages purporting to govern it, by reason of conduct which would be criminal under this section

is guilty of rigging a contest.

2. Rigging a contest is a Class C offense.

1-3B-32. DEFRAUDING A CREDITOR

1. A person who:

a. Destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with purpose to hinder enforcement of that interest; or

b. Knowing that proceedings have been or are about to be instituted for the appointment of a receiver or other person entitled to administer property for the benefit of a creditor:

(1) Destroys, removes, encumbers, transfers, or otherwise deals with any property with purpose to defeat or obstruct the operation of any law relating to administration of property for the benefit of a creditor; or

(2) Knowingly falsifies any writing or record relating to the property;
or

(3) Knowingly misrepresents or refuses to disclose to a person entitled to administer property for the benefit of a creditor, the existence, amount or location of the property, or any other information which the actor could be legally required to furnish in relation to such administration

is guilty of defrauding a creditor.

2. Defrauding a creditor is a Class C offense.

1-3B-33. UNLAWFUL DEALING WITH PROPERTY BY A FIDUCIARY

1. A person who deals with the property that has been entrusted to him/her as a fiduciary, or property of the Tribe or government or of a financial institution, in a manner which he/she knows is a violation of the person's duty and which involves a substantial risk of loss to the owner or to a person for whose benefit the property was entrusted is guilty of unlawful dealing with property by a fiduciary.

2. As used in this section, "fiduciary" includes a trustee, guardian, executor, administrator, receiver or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

3. Unlawful dealing with property by a fiduciary is a Class C offense.

1-3B-34. SECURING EXECUTION OF A DOCUMENT BY DECEPTION

1. A person who, by deception, causes another to execute any instrument affecting or likely to affect the pecuniary interest of any person is guilty of securing execution of a document by deception.

2. Securing execution of a document by deception is a Class C offense.

1-3B-35. MAKING A FALSE CREDIT REPORT

1. A person who knowingly makes a materially false or misleading statement to obtain property or credit for himself/herself or another, or to keep some other person from obtaining credit, is guilty of making a false credit report.
2. Making a false credit report is a Class C offense.

Offenses against the Administration of Justice and Tribal Government

1-3C-01. BRIBERY IN AN OFFICIAL MATTER

1. A person who offers, confers, or agrees to confer upon another, or solicits, accepts or agrees to accept from another:
 - a. Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a Tribal or governmental officer or employee, or as an official of a party or faction or as a voter; or
 - b. Any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or
 - c. Any benefit as consideration for a violation of a known duty as a Tribal or governmental officer or employee or party officialis guilty of bribery in an official matter.
2. It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because that person had not yet assumed office, or lacked jurisdiction, or for any other reason.
3. Bribery in an official matter is a Class B offense.

1-3C-02. IMPROPER INFLUENCE IN AN OFFICIAL MATTER

1. A person who:
 - a. Threatens unlawful harm to any person with a purpose to influence another's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or
 - b. Threatens harm to any public servant or relative of a public servant with purpose to influence the public servant's decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or
 - c. Threatens harm to any public servant or party official or relative of either with a purpose to influence that person to violate a duty; or
 - d. Privately addresses to any public servant who has or will have official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication, designed to influence the outcome on the basis of considerations other than those authorized by lawis guilty of improper influence in an official matter.
2. It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because that person had not yet assumed office, or lacked jurisdiction, or for any other reason.
3. Improper influence in an official matter is a Class C offense.

1-3C-03. COMPENSATION FOR PAST OFFICIAL BEHAVIOR

1. A person who:
 - a. solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation or vote favorable to another or for having otherwise exercised a discretion in the other's favor, or for having violated a duty; or

- b. offers, confers, or agrees to confer compensation, acceptance of which is prohibited by this section

is guilty of providing compensation for past official behavior.

- 2. Compensation for past official behavior is a Class C offense.

1-3C-04. RETALIATION FOR PAST OFFICIAL ACTION

- 1. A person who harms any other person by any unlawful act in retaliation for anything lawfully done by the other person in that person's capacity as a public servant is guilty of retaliation for past official action.
- 2. Retaliation for past official action is a Class B offense.

1-3C-05. IMPROPER GIFT TO PUBLIC SERVANT

- 1. A person who:
 - a. Being a public servant in any department or agency exercising regulatory functions, or conducting inspections or investigations, or carrying on civil or criminal litigation on behalf of the Tribe or government, or having custody of prisoners, shall solicit or accept any valuable benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated; or
 - b. Being a public servant having any discretionary functions to perform in connection with contracts, purchases, payments, claims or other valuable transactions of the Tribe or government, shall solicit, accept or agree to accept any valuable benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transactions; or
 - c. Being a public servant having judicial, legislative, or administrative authority, or being a public servant employed by or in a court or other tribunal having such authority or being involved in the enforcement

of such a tribunal's decisions, shall solicit, accept, or agree to accept any valuable benefit from any person known to be interested in or likely to become interested in any matter before such public servant or a tribunal with which the public servant is associated; or

- d. Knowingly confers or offers or agrees to confer any benefit prohibited by this section

is guilty of receiving an improper gift to a public servant.

2. This section shall not apply to:

- a. Fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives lawful consideration or to which the public servant is otherwise entitled; or
- b. Gifts or other benefits conferred on account of kinship or other personal, professional, or business relationship independent of the official status of the receiver; or
- c. Trivial benefits incidental to personal, professional, or business contacts and involving no substantial risk of undermining official impartiality.

3. Improper gift to a public servant is a Class C offense.

1-3C-06. PERJURY

- 1. A person who, in an official proceeding, makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and the person does not believe it to be true, is guilty of perjury.
- 2. Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial.—Whether a falsification is material in a given factual situation is a question of law to be decided by the court.

3. It is no defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made under an oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.
4. No person shall be guilty of an offense under this section if the person retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed, and before the falsification substantially affected the proceeding.
5. Where a defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single complaint alleging in the alternative that one or the other was false and not believed by the defendant. In such case, it shall not be necessary for the prosecution to prove which statement was false, but only that one or the other was false and not believed by the defendant to be true.
6. No person shall be convicted of any offense under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.
7. Perjury is a Class A offense.

1-3C-07. FALSE ALARM

1. A person who knowingly:
 - a. Causes a false fire alarm or alarm of other emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property; or
 - b. Gives false information to any law enforcement officer with purpose to implicate another in an offense; or
 - c. Reports to law enforcement authorities an offense or other incident within their concern knowing or believing that it did not occur; or

- d. Pretends to furnish the law enforcement authorities with information relating to an offense or incident when the person knows the person has no information relating to such offense or incident; or
 - e. Gives a false name or address to a law enforcement officer in the lawful discharge of the officer's official duties
- is guilty of causing a false alarm.

2. Causing a false alarm is a Class C offense.

1-3C-08. TAMPERING WITH A WITNESS

1. A person who:

- a. Believing that an official proceeding or investigation is pending or about to be instituted, attempts to induce or otherwise cause another person to:
 - (1) Testify or inform falsely; or
 - (2) Withhold any testimony, information, document, or thing; or
 - (3) Elude legal process summoning the other person to testify or supply evidence; or
 - (4) Absent himself/herself from any proceeding or investigation to which the other person has been legally summoned; or
- b. Harms another by an unlawful act in retaliation for anything done by another in his/her capacity as a witness or informant; or
- c. Solicits, accepts, or agrees to accept a benefit in consideration for doing any of the things specified in this section

is guilty of tampering with a witness.

2. Tampering with a witness is a Class A offense if the actor employs force, deception, threat or offer of a valuable benefit; otherwise, tampering with a witness is a Class B offense.

1-3C-09. TAMPERING WITH EVIDENCE

1. A person who, believing that an official proceeding or investigation is pending or about to be instituted:
 - a. Alters, destroys, conceals, or removes any record, document, or thing with purpose to impair its verity or availability in such proceeding or investigation; or
 - b. Makes, presents, or uses any record, document, or thing knowing it to be false and with a purpose to mislead a public servant who is or may be engaged in such proceeding or investigation

is guilty of tampering with evidence.

2. Tampering with evidence is a Class B offense.

1-3C-10. TAMPERING WITH A PUBLIC RECORD

1. A person who:
 - a. Knowingly makes a false entry in, or false alteration on any record, document or thing belonging to or received or kept by the Tribe or government for information or record as required by law to be kept by others for information of the Tribe or government; or
 - b. Makes, presents, or uses any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in a. above; or
 - c. Purposely and unlawfully destroys, conceals, removes, or otherwise impairs the verity or availability of any such record, document, or thing

is guilty of tampering with a public record.

2. Tampering with a public record is a Class C offense.

1-3C-11. DEFINITIONS APPLICABLE TO SECTIONS 1-3C-01 to 1-3C-10

1. "Official Proceeding" means any proceeding before a legislative, judicial, administrative, or other Tribal or governmental body or official authorized by law to take evidence under oath or affirmation, including a Notary Public or other person taking evidence in connection with any of these proceedings.
2. "Public Servant" means any officer or employee of the Tribe or government, including judges and Tribal leaders, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function, but the term does not include witnesses.
3. "Statement" means any representation. It includes a representation of opinion, belief or other state of mind only if the representation clearly relates to the state of mind apart from or in addition to any facts which is the subject of the representation.
4. "Government" includes Tribal, State, local and Federal government.
5. "Harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any other person or entity in whose welfare he/she is interested.
6. "Benefit" means a gain or advantage, or anything regarded as a gain or advantage, including benefit to any other person, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate promises to support or oppose.

1-3C-12. RESISTING ARREST

1. A person who, for the purpose of preventing a law enforcement officer from effecting an arrest or detention of himself/herself or of any other person, or of discharging any other duty, creates a substantial risk of bodily harm to anyone or employs means justifying or requiring substantial force to overcome the resistance, regardless of whether there is a legal basis for the arrest or detention, is guilty of resisting arrest.
2. Resisting arrest is a Class D offense.

1-3C-13. OBSTRUCTING JUSTICE

1. A person who, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for the commission of an offense:
 - a. Harbors or conceals the other; or
 - b. Provides or aids in providing weapons, transportation, disguise, or other means of avoiding apprehension or effecting escape; or
 - c. Conceals or destroys evidence of the offense, or tampers with a witness, informant, document, or other source of information, regardless of its admissibility in evidence; or
 - d. Warns the other of impending discovery or apprehension, except if such warning is given in an attempt to get the other person to comply with the law; or
 - e. Volunteers false information to a law enforcement officer for the purpose of preventing the apprehension of another; or
 - f. Obstructs by force, threat, bribery or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of another personis guilty of obstructing justice.

2. Obstructing justice is a Class C offense if the offense committed or charged or liable to be charged against the person aided is a Class A or B offense; otherwise, obstructing justice is a Class D offense.

1-3C-14. ESCAPE

1. A person who unlawfully removes himself/herself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period is guilty of escape. "Official detention" means arrest, detention in any facility for custody of persons under charge or conviction of crime, or any other detention for law enforcement purposes. "Official detention" does not include supervision of probation or parole, or constraint incident to release on bail.

2. A person who:

- a. Aids another person to escape from official detention; or
- b. Knowingly provides a person in official detention with anything which may facilitate such person's escape; or
- c. Being a person in official detention, knowingly procures, makes, or possesses anything which may facilitate escape

is guilty of escape.

3. Penalties for escape:

- a. First degree escape-- Any escape by a prisoner constitutes first degree escape if the prisoner effects the escape:
 - (1) By means of the use or threat of violence;
 - (2) From a secure correctional facility; or
 - (3) From the immediate custody of a law enforcement officer or corrections officer.

First degree escape is a Class B offense.

- b. Second degree escape-- Any escape by a prisoner constitutes second degree escape if the prisoner effects the escape by means of failure to return to custody following an assignment or temporary leave granted for a specific purpose or limited period or leaves a nonsecure correctional facility without authorization.

Second degree escape is a Class C offense.

1-3C-15. PROVIDING CONTRABAND TO A PERSON IN DETENTION

- 1. A person who knowingly provides a person in official detention with an alcoholic beverage, drug, weapon, implement of escape or any other thing or substance which the actor knows it is unlawful or improper for the detainee to possess is guilty of providing contraband to a person in detention.
- 2. Providing contraband to a person in detention is a Class C offense.

1-3C-16. BAIL JUMPING

1. A person who, having been released on bail or on his/her own recognizance by court order or other lawful authority upon condition to subsequently appear on a charge of an offense, is guilty of bail jumping if the person fails without just cause to appear in person. Provided however, in a case where a Class D offense is charged, if the person fails without just cause to appear in person or by counsel at the time and place which have been designated for the appearance, the person is guilty of bail jumping.
2. Bail jumping is an offense of the next lower degree as the offense originally charged for which the actor was released, but not less than a Class D offense.

1-3C-17. DOING BUSINESS WITHOUT A LICENSE

1. A person who commences or carries on any business, trade, profession, or calling, the transaction or carrying on of which is required by law to be licensed, without having an appropriate license is guilty of doing business without a license.
2. Doing business without a license is a Class D offense.

1-3C-18. TAMPERING WITH PUBLIC PROPERTY

1. A person who:
 - a. steals, defaces, mutilates, litters, falsifies, or removes all or part of any record or document placed or filed in a public office or with any public officer, or permits another to do so; or
 - b. knowingly injures, defaces or removes any signal, monument or other marker placed or erected as part of an official survey of the Tribe or State or Federal Government without authority to do so; or
 - c. intentionally defaces, obliterates, tears down, or destroys any copy or transcript or extract from any law, or any proclamation, advertisement, or notice set up or displayed by a public officer or

court, without authority to do so and before the expiration of the time for which the same was to remain set up

is guilty of tampering with public property.

2. Tampering with public property is a Class D offense.

1-3C-19. INJURING PUBLIC PROPERTY

1. A person who:

- a. Intentionally breaks down, pulls down or otherwise injures or destroys any jail, other place of confinement, or other public property; or
- b. Intentionally and without authority to do so digs up, removes, displaces, or otherwise injures or destroys any public road, highway, or bridge; or private road or bridge; or other public building or structure; or
- c. Removes or injures any milepost, guidepost, or road or highway sign or marker or any inscription on them while such is erected along a road or highway

is guilty of injuring public property.

2. For the purposes of this section, public property includes but is not limited to tribal government offices, tribal court, tribal jail, other tribal facilities, ambulances, and police cars.
3. Injuring public property is a Class C offense if the injury is to a jail or place of confinement, or value of the damage done exceeds \$100.00; otherwise injuring public property is a Class D offense.

1-3C-20. RIOT

1. A person who:

- a. Simultaneously with two or more other persons engages in tumultuous or violent conduct and thereby knowingly or recklessly creates a substantial risk of causing public alarm; or
- b. assembles with two or more persons with the purpose of engaging soon thereafter in tumultuous or violent conduct, believing that two or more persons in the assembly have the same purpose

is guilty of riot.

2. Riot is a Class B offense.

1-3C-21. FAILURE TO DISPERSE

1. A person who refuses or knowingly fails to obey an order to disperse or leave the immediate vicinity given by a law enforcement officer or other public servant performing a law enforcement function at the scene of a riot, fire or other public disorder, or given in the course of executing or enforcing the law or in the course of the investigation of the commission of an accident, fire, offense, or suspected offense, is guilty of failure to disperse.
2. Failure to disperse is a Class D offense.

1-3C-22. MAKING A FALSE REPORT

1. A person who initiates or circulates a report or warning of fire, bombing or other crime or catastrophe, knowing that the report or warning is false or baseless and that it is likely to cause evacuation of any building, place of assembly, or facility of public transport, or to cause public inconvenience or alarm or action of any sort by an official or volunteer agency organized to deal with emergencies, is guilty of making a false report.
2. Making a false report is a Class C offense.

1-3C-23. EMERGENCY TELEPHONE ABUSE

1. A person who:
 - a. Knowingly refuses to yield or surrender the use of a party line or public pay telephone to another person upon being informed that

said telephone is needed to report a fire, or summon police, medical or other aid in case of an emergency, unless that actor is already using said telephone to report an emergency; or

- b. Asks for or requests use of a party line or public pay telephone on the pretext that an emergency exists

is guilty of emergency telephone abuse.

- 2. "Emergency" means a situation in which property or human life or safety is in jeopardy and the prompt summoning of aid is necessary to ensure the safety of human life or property.
- 3. Emergency telephone abuse is a Class D offense.

1-3C-24. DESECRATION

- 1. A person who purposely desecrates any public monument or structure, or place of worship or burial is guilty of desecration.
- 2. "Desecrate" means defacing, damaging, polluting, or otherwise physically mistreating in a way that the actor knows or believes will outrage the sensibilities of persons likely to observe or discover the action.
- 3. Desecration is a Class D offense.

1-3C-25. ABUSING A CORPSE

- 1. A person who purposely and unlawfully:
 - a. Removes, conceals, dissects, or destroys a corpse or any part of a corpse; or
 - b. Disinters a corpse that has been buried or otherwise interred; or
 - c. Treats a corpse in a way the person knows would outrage ordinary sensibilities

is guilty of abusing a corpse.

2. Abusing a corpse is a Class D offense.

1-3C-26. CRUELTY TO AN ANIMAL

1. A person who purposely or knowingly:
 - a. Tortures or seriously overworks an animal; or
 - b. Fails to provide necessary food, care, or shelter for an animal in the person's custody; or
 - c. Abandons an animal in the person's custody; or
 - d. Transports or confines an animal in a cruel manner; or
 - e. Kills, injures, or administers poison to an animal without legal privilege to do so; or
 - f. Causes one animal to fight with another

is guilty of cruelty to an animal.

2. It is a defense to prosecution under this section that the conduct of the actor toward the animal was an accepted veterinary practice or directly related to a bona fide experimentation for scientific research, provided that if the animal is to be destroyed, the manner employed will not be unnecessarily cruel unless directly necessary to the veterinary purpose or scientific research involved.

3. Cruelty to an animal is a Class D offense.

1-3C-27. WEAPONS OFFENSE

1. A person who:
 - a. being addicted to any narcotic drug, or having been declared mentally incompetent, owns or has in his/her possession or custody or control a dangerous weapon; or

- b. being intoxicated or otherwise under the influence of alcoholic beverages or other intoxicating substance, drug, or medicine, has a dangerous weapon in his/her possession, or custody or control; or
 - c. carries a loaded firearm in a vehicle on a public road without lawful authority to do so; or
 - d. has on his/her person a dangerous weapon with intent to unlawfully assault another; or
 - e. discharges any kind of firearm from a motor vehicle without lawful authority to do so; or
 - f. discharges a firearm from, upon or across any public highway without lawful authority to do so; or
 - g. being under the age of 18 years old, possesses a firearm without the consent of his/her parent or guardian; or
 - h. having been convicted of a federal, state or tribal crime which has been determined under that jurisdiction's law to be a "hate crime" has in his/her possession or control a firearm or dangerous weapon
- is guilty of a weapons offense.

2. Definitions

- a. "Dangerous weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury. In determining whether an item, object or thing not commonly known as a dangerous weapon, is a dangerous weapon, the character of the instrument, object, or thing, the character of the wound produced, if any, and the manner in which the instrument, item or thing was used shall be determinative.
- b. "Firearms" means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; or, the frame or receiver of any such weapon; or, any firearm muffler or firearm silencer; or, any destructive device. Such term does not include an antique firearm. Such term does

include pistols, revolvers, rifles, shotguns, and any device that is capable of being used as a weapon because it expels a projectile by some means of force.

3. A firearm or other weapon shall be deemed loaded when there is an unexpended cartridge, shell or projectile in the firing position, except in the case of pistols and revolvers, in which case they shall be deemed loaded when the unexpended cartridge, shell or projectile is in a position that the manual operation of any mechanism once would cause the unexpended cartridge, shell or projectile to be fired.
4. Weapons offense is a Class C offense.

1-3C-28. UNLAWFUL POSSESSION OF FIREARM IN DESIGNATED LOCATIONS

1. It is unlawful for any person other than a certified law enforcement officer to possess a firearm on the following locations on the Lower Brule Reservation:
 - a. School grounds;
 - b. Casino;
 - c. Courthouse;
 - d. Tribal Council chambers;
 - e. Tribal government buildings;
 - f. Powwow grounds.
2. Unlawful possession of a firearm in a designated location is a Class B offense.

1-3C-29. AGGRAVATED WEAPONS OFFENSE

1. A person who:
 - a. carries a dangerous weapon concealed on the person; or
 - b. uses a dangerous weapon in a fight or quarrel; or

- c. possesses a short-barreled shotgun meaning a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such a weapon as modified has an overall length of less than 26 inches; or
- d. possesses a short-barreled rifle meaning a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches; or
- e. possesses a machinegun as defined in Sec. 5845 of the Internal Revenue Code of 1986; or
- f. possess a firearm which has been modified or altered in any way, or on which the serial number has been modified or altered in any way;
- g. possesses, manufactures, sells, or transfers an assault weapon which is defined as:
 - (1) a weapon that does not have a fixed magazine; or
 - (2) a semiautomatic rifle that can accept a detachable magazine and has any one of the following characteristics: a pistol grip; a forward grip; a folding, telescoping, or detachable stock; a grenade or rocket launcher; a barrel shroud; or a threaded barrel; or
 - (3) a semiautomatic rifle or pistol with a fixed magazine that can accept more than 10 rounds; or
 - (4) a semiautomatic pistol that can accept a detachable magazine and has any one of the following characteristics: a threaded barrel; a second pistol grip; a barrel shroud; the capacity to accept a detachable magazine at some location outside of the pistol grip; or a semiautomatic version of an automatic firearm; or

- (5) a semiautomatic shotgun that has any one of the following characteristics: a folding, telescoping, or detachable stock; a pistol grip; a fixed magazine that can accept more than five rounds; the ability to accept a detachable magazine; a forward grip; or a grenade or rocket launcher; or
- (6) a shotgun with a revolving cylinder; or
- (7) duplicates, variants, or altered facsimiles with the capability of any weapon prohibited by this section; or
- (8) all belt-fed semiautomatic firearms; or
- (9) any combination of parts from which any such prohibited firearm can be assembled; or
- (10) the frame or receiver of a prohibited rifle or shotgun.

h. possesses, manufactures, transfers, or sells a privately made firearm (commonly known as a “ghost gun”). A privately made firearm is a firearm, including a frame or receiver, completed, assembled, or otherwise produced by a person other than a licensed manufacturer, and without a serial number placed by a licensed manufacturer at the time the firearm was produced

is guilty of aggravated weapons offense.

2. Aggravated weapons offense is a Class B offense.

1-3C-30. MISHANDLING A DANGEROUS DEVICE

1. A person who:

- a. Delivers or causes to be delivered to any express, railway company or common carrier, or places in the mail or delivers to any person, or throws or places on or about the premises or property of another or in any place where another may be injured thereby, a dangerous device, knowing it to be such, unless the person informs the

threatened person of the nature thereof and its placement if for some lawful purpose; or

- b. Knowingly constructs or contrives any dangerous device, or with intent to injure another in that person's person or property, has possession of a dangerous device

is guilty of mishandling a dangerous device.

- 2. For purposes of this section, a "dangerous device" is any box, package, contrivance, bomb, or apparatus containing or arranged with an explosive or acid or poisonous or inflammable substance; or harmful weapon or thing, constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or to strike with any of its parts unexpectedly when moved, handled, or opened or after the lapse of time or under conditions or in a manner calculated to endanger health, life, limb, or property.
- 3. Mishandling a dangerous device is a Class A offense.

1-3C-31. ABUSE OF PSYCHOTOXIC CHEMICAL SOLVENTS

- 1. A person who:

- a. For the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of his/her brain or nervous system, purposely:

(1) Smells or inhales the fumes of any psychotoxic chemical solvent;
or

(2) Possesses, purchases, or attempts to possess or purchase any psychotoxic chemical solvent; or

- b. Knowing or believing that the purchaser or another intends to use a psychotoxic chemical solvent in violation of this section, sells or offers to sell any psychotoxic chemical solvent

is guilty of abuse of psychotoxic chemical solvents.

2. This section shall not apply to the inhalation of anesthesia for medical or dental purposes.
3. As used in this section, "psychotoxic chemical solvents" includes any glue, cement, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, ethyl-alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl, petone, pentachlorophenol, petroleum ether, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement or listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.
4. Abuse of psychotoxic chemical solvents is a Class D offense.

1-3C- 32. WATERS OFFENSE

1. A person who:
 - a. Interferes with or alters the flow of water in any stream, river, ditch, canal or lateral without lawful authority to do so and in violation of the right of any other person; or
 - b. Knowingly breaks, injures, alters or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure intended to create hydraulic power or pressure or direct the flow of water, without lawful authority to do so; or
 - c. Takes irrigation water out of turn or in excess amount without lawful authority to do so and in violation of the right of any other person; or
 - d. Pollutes or befouls any water in any of the following ways:

(1) Constructs or maintains a corral, sheep pen, goat pen, stable, pig pen, chicken coop, or other offensive yard or outhouse where the waste or drainage therefrom shall flow directly into waters of any stream, well, spring, or source of water used for domestic purposes; or

(2) Deposits, piles, unloads, or leaves any manure heap, rubbish, or the carcass of any dead animal where the waste or drainage therefrom will flow directly into the waters of any stream, well, spring, or source of water used for domestic purposes; or

(3) Constructs, establishes or maintains any corral, yard, vat, pond, camp, or bedding place for the shearing, dipping, washing, storing, herding, holding, or keeping of livestock in such proximity to a stream, or other source of water used for domestic purposes, or which flows through a city or town, so that the waste, refuse or filth therefrom find their way into said source of water; or

(4) Knowingly causes or allows any substance harmful or potentially harmful to human life to enter into a source of water used for a domestic purpose

is guilty of waters offense.

2. The presence of lawful authority need not be disproved by the prosecution, but shall be presented as an affirmative defense.

3. Waters offense is a Class C offense.

1-3C-33. PUBLIC NUISANCE

1. A person who, without lawful authority to do so, does any act or fails to perform any duty, which act or omission either:

a. Unreasonably annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons; or

- b. Unlawfully interferes with, obstructs, or tends to obstruct or renders dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, highway, or road; or
- c. In any way unreasonably renders three or more persons insecure in life or the use of property

is guilty of public nuisance.

- 2. An act or omission to act which affects three or more persons in the ways specified in this section is a nuisance regardless of whether the extent of the annoyance or damage inflicted on the individuals is unequal.
- 3. The presence of lawful authority need not be disproved by the prosecution, but shall be presented as an affirmative defense.
- 4. Public nuisance is a Class D offense.

1-3C-34. CURFEW VIOLATION

- 1. Every unmarried individual who is under the age of 18 years old age shall be subject to the curfew regulations within the Lower Brule Sioux Reservation. The curfew regulation shall be in effect from the hours of 10 p.m. to 6:00 a.m., every day of the week except where there is direct supervision by a parent, guardian or some adult person so appointed for meetings, dances, or gatherings.
- 2. Any parent, guardian, or appointed person whose children shall be convicted of failing to obey the curfew regulation shall be deemed guilty of a Class D offense and upon conviction thereof shall be sentenced accordingly.

1-3C -35. LITTERING AND UNLAWFUL DUMPING

- 1. A person who:
 - a. throws, dumps, places, or deposits upon the lands of another or any Tribal or public property, or highway, street, road, or other area not

the person's own, without the consent of the owner or other lawful permission, any garbage, debris, junk, carcasses, trash, refuse or other substances of any nature whatsoever which would mark the appearance or detract from the cleanliness of the area; or

- b. stores, keeps or allows to accumulate any wrecked, junked, or unserviceable vehicles, appliances, or implements within the boundaries of a city, town, community or village, unless the person has a permit from the Tribal Council to maintain a junkyard

is guilty of littering and unlawful dumping.

- 2. Littering and Unlawful Dumping is a Class D offense.

1-3C-36. LIVESTOCK OFFENSE

- 1. A person who:

- a. Knowingly or recklessly refuses or fails to mark or brand his/her livestock when such is required in the interest of livestock identification or directed by Tribal or government officials; or
- b. Alters, obliterates, or removes a brand or mark, or misbrands or mismarks livestock with a purpose to deceive another for any reason; or
- c. Knowingly permits his/her livestock to graze or trespass on the property of another or of the Tribe without permission to do so or in excess of permitted time or amount; or
- d. Knowingly refuses to sell, dispose, or otherwise remove sick or otherwise infectious livestock from common grazing areas or areas where there is a substantial danger of infecting other livestock; or
- e. Knowingly fails to treat or dispose of a sick animal where there is a substantial danger of infecting other animals; or

- f. Fails to dip, inoculate or otherwise treat livestock in the manner which the Tribal Council or its designated representative shall direct; or
- g. Makes a false report of livestock owned; or
- h. Purposely obstructs or interferes with a livestock roundup

is guilty of livestock offense.

- 2. Except in cases in which the owner or person having custody of livestock believed to be in violation of this section cannot be found after reasonable search, no conviction shall be found for subsections a., b., c., d., e., or f. set forth next above unless the owner or person having custody of the livestock involved is given 48 hours written notice of the alleged violation and has not after such period of notice remedied the alleged violation.
- 3. Livestock found to be in violation of this section may be impounded at the time an arrest is made, and may be impounded without prior notice to the owner if a court so orders upon receipt of evidence that such animals seriously threaten the property of the Tribe or another or the health of other livestock on the Reservation, and that immediate action is necessary to protect such interest from serious harm. A reasonable fee for the care of such animals may be collected prior to their release.
- 4. Livestock offense is a Class D offense.

1-3C-37. WELFARE OFFENSE

- 1. A person who:
 - a. gives false information to another for the purpose of obtaining or retaining a welfare benefit; or
 - b. knowingly fails to correct misinformation which enables the person to obtain or retain a welfare benefit; or

- c. continues to accept and use for the person's own benefit or the benefit of another, a welfare benefit to which the person knows he/she is not entitled; or
- d. uses or expends money or commodities granted as a welfare benefit in an improper manner or in a manner which does not proportionately benefit each of those persons intended to benefit by the grant; or
- e. knowingly uses a welfare benefit in a manner contrary to the regulations relating thereto

is guilty of welfare offense.

2. Welfare offense is a Class D offense.

1-3C-38. DISORDERLY CONDUCT

- 1. A person who intentionally or knowingly:
 - a. Uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace; or
 - b. Makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace; or
 - c. Creates, by chemical means, a noxious and unreasonable noise in a public place or in or near a private residence that the person has no right to occupy; or
 - d. Abuses or threatens a person in a public place in an obviously offensive manner; or
 - e. Makes unreasonable noise in a public place or in or near a private residence that the person has no right to occupy; or
 - f. Discharges a firearm in a public place; or

- g. Displays a firearm or other deadly weapon in a public place in a manner calculated to alarm; or
- h. Exposes the person's anus or genitals in a public place and is reckless about whether another may be present who will be offended or alarmed by the act

is guilty of disorderly conduct.

- 2. For the purposes of this section, an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequence in the public place or near a private residence.
- 3. Disorderly conduct is a Class D offense.

1-3C-39. PROTECTIVE CUSTODY

A person who as a result of severe intoxication lacks the ability to perform normal physical functions or presents a clear and immediate danger to himself/herself or others may be taken into protective custody and held in protective custody for a period not to exceed 24 hours; provided that such individual shall be released without unnecessary delay upon achieving sobriety. Nothing in this section shall be construed as constituting a criminal offense and no warrant, complaint or summons shall issue pursuant to this section.

1-3C-40. OPEN CONTAINER IN A MOTOR VEHICLE

- 1. A person who has a package or any receptacle containing an alcoholic beverage in his/her possession in a motor vehicle unless the seal of the original package remains unbroken or the alcoholic beverage is so removed that no occupant of the motor vehicle shall have access to it while the vehicle is in motion is guilty of possession of an open container in a motor vehicle.
- 2. Possession of an open container in a motor vehicle is a Class D offense.

1-3C-41. PUBLIC INTOXICATION

1. A person who is present in a public place when the person is under the influence of alcoholic beverages or controlled substances or both, to the extent that the person's mental or physical abilities are substantially impaired is guilty of public intoxication.
2. For the purpose of this section, "Public Place" means any place other than inside a private dwelling or vehicle.
3. Public intoxication is a Class D offense.

1-3C-42. FAILURE TO APPEAR OR COMPLY WITH COURT ORDER

1. Any Indian who shall willfully disobey any order, subpoena, warrant, or command duly issued, and made or given by the Lower Brule Sioux Tribal Court or any officer thereof is guilty of a Class C offense, and upon conviction shall be sentenced accordingly.
2. A person shall not be convicted of disobedience to a lawful order under this section, in addition to revocation of probation, for the identical conduct resulting in the revocation of probation. This section may be used only to address conduct which is not the subject of the revocation of probation.
3. Failure to Appear or Comply with an Order is a Class C offense.

1-3C-43. SALE OF INTOXICANTS

1. No person shall sell any alcoholic beverages except as authorized under the provisions of this section. Any person doing so shall be deemed guilty of an offense and upon conviction thereof shall be sentenced not to exceed the penalty for a Class B offense.
2. This provision shall not apply to the purchase and sale of wines used by ordained rabbis, priests, ministers or pastors of any church or established religious organization for sacramental purposes.