

**EXPIRES ON  
FEBRUARY 29, 2024**

**TITLE 5  
CRIMINAL CODE**

**History and Amendments<sup>1</sup>**

Title 5 adopted by Tribal Resolution No. 80-120, approved by the Bureau of Indian Affairs and effective on 2/25/81.

Section 3(A)(3) renumbered as §3(A)(4); Sections 2(C), 3(A)(1)(2)(3), 3(B)(1)(2)(3), 3(C)(1)(2), 3(D)(1)(2)(3)(4), 3(E)(1), 4(A) (1)(2)(5)(6)(7)(8), 4(B)(1)(2)(3)(4)(7)(8)(9)(10), 4(C)(1)(2)(4)(5), 5(A), 5(B), 5(C), 5(D), 6(A)(1)(3), 6(B), 6(C)(1)(3), 6(D), 7(A)(1)(2)(3), 7(B)(1)(2)(4)(5), 7(C)(1)(2)(3)(5)(6)(7)(9), 8(B), 8(C)(1), 9(A)(1)(2)(3)(4)(5)(6)(7), and 9(B)(1)(2)(3)(4)(5)(6)(7) revised and amended; and §§3(A)(3), 3(B)(4), 4(D) and 7(C)(12) added by Tribal Resolution No. 85-104, approved by the Bureau of Indian Affairs and effective on 11/13/85.

Title 5 section and page numbering scheme revised and amended by Tribal Resolution No. 89-34, effective on 3/21/89.

Sections 5-1-106(3)(c) and 5-1-106(3)(c)(i) amended by Tribal Resolution No. 98-115, approved by the Bureau of Indian Affairs and effective on 11/24/98.

Section 5-1-103(6) added by Tribal Resolution No. 99-31, approved by the Bureau of Indian Affairs and effective on 4/29/99.

Section 5-1-105 repealed and amended by Tribal Resolution No. 00-172, approved by the Bureau of Indian Affairs and effective on September 27, 2000.

Section 5-1-107(3)(m) amended by Tribal Resolution No. 2010-84.

Resolution 2021-151, reformatted Criminal Code with technical changes (deletion of spelled numerals) and incorporation of previous amendments; **in effect until February 29, 2024.** Resolution 2023-212 replaces the 2021 reformatted version of this code with a fully revised code effective March 1, 2024.

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<sup>1</sup> This page does not constitute an official part of any code. Information contained on this page is solely for informational and historical purposes and is from sources deemed reliable.

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## TITLE 5

### SOUTHERN UTE INDIAN TRIBAL CODE

#### CRIMINAL CODE

**5-1-101. Federal/Tribal Concurrent Jurisdiction.** When a crime charged is defined under 18 USC §1153, the Southern Ute Indian Tribal Court will exercise jurisdiction only when the United States fails to prosecute said crime.

**5-1-102. Attempt, Conspiracy, Solicitation.**

(1) **Attempt.**

(a) A person is guilty of an attempt to commit an offense if, acting with the kind of intent otherwise required for the commission of an offense, he<sup>2</sup> engages in conduct constituting a substantial step toward commission of the offense. It is no defense to the offense of attempt that the offense attempted was not actually committed due to the factual or legal impossibility of consummating the intended offense if the offense could have been committed had the circumstances been as the actor believed them to be. Upon conviction of attempt, a person will be sentenced under the provisions of the crime he attempted to commit.

(b) A person commits attempt who tries to commit any major crime over which the federal courts have concurrent jurisdiction (Title 18 USC §1153), who is an accessory after the fact of such crime, or who attempts to commit any crime as defined by this Code. An offender under this Code upon conviction shall be sentenced to a term of imprisonment not to exceed 6 months and a fine of not more than \$500.

(2) **Criminal Conspiracy.** A person is guilty of criminal conspiracy when he intends that conduct constituting a crime be performed and agrees with one or more persons to engage in or cause the performance of such conduct and any one of them commits an overt act pursuant to the conspiracy. Upon conviction of criminal conspiracy, a person will be sentenced under the provisions of the crime he conspired to commit.

(3) **Solicitation.** A person is guilty of solicitation when he intends that another person commit an offense and entices, advises and incites, orders, or otherwise encourages such other person to commit an offense, and the offender upon

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<sup>2</sup> Pursuant to Title I, Article I, Section 20, INTERPRETATION OF STATUTES, page 4, whenever the masculine gender is used in a statute, it may also be read to include the feminine.

conviction shall be sentenced according to the sentencing limits as set forth in the offense or offenses, which were to be committed.

**5-1-103. Offenses Against the Person.**

**(1) Assault and Related Offenses.**

- (a) **Assault.** Any person commits assault when he by any threat or physical action intentionally, knowingly or recklessly places or attempts to place another person in fear of serious bodily injury, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and to a fine not to exceed \$500.
- (b) **Assault and Battery.** Any person commits assault and battery when he intentionally, knowingly or recklessly causes bodily injury to another person or causes another to harm himself, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and to a fine not to exceed \$500.
- (c) **Assault and Battery on a Peace Officer.** Any person commits assault and battery on a peace officer when he intentionally, knowingly or recklessly causes bodily injury to a peace officer or causes a peace officer to harm himself, while such officer is acting in the performance of the duty of his office. Upon conviction, the offender shall be sentenced to a term of imprisonment of not less than 30 days nor more than 6 months and to a fine not to exceed \$500.
- (d) **Mayhem.** A person is guilty of mayhem if he unlawfully, purposely, or knowingly deprives a human being of a member of his body or disables or renders it useless or cuts out or disables the tongue, puts out an eye, slits the nose, ear or lip of another, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine of \$500.

**(2) Homicide and Related Offenses.**

- (a) **Criminal Homicide.** A person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently causes the death of another human being, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and to a fine not to exceed \$500.
- (b) **Vehicular Homicide.** A person is guilty of vehicular homicide if he causes the death of another by operating a motor vehicle in a reckless, negligent or careless manner while under the influence of alcohol,

controlled substances or drugs which render the person incapable of safely driving a vehicle; and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.

(c) **Causing a Suicide.** A person is guilty of causing a suicide if he purposely causes a suicide by force, duress, or deception, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.

(d) **Vehicular Assault.** A person is guilty of vehicular assault if he causes injury to another by operating a motor vehicle in a reckless, negligent or careless manner. Upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.

(3) **Abduction and Related Offenses.**

(a) **Abduction.** A person commits abduction when he willfully takes away or detains another against his will (so as to interfere with his liberty) or without consent of the person having lawful care or custody of the detained individual, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.

(b) **False Imprisonment.** A person is guilty of false imprisonment if he knowingly restrains another unlawfully so as to interfere with his liberty, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 60 days and a fine not to exceed \$300..

(4) **Sexual Offenses.**

(a) **Rape.** A person commits a crime of rape if he has sexual intercourse with another and he compels the other person to submit by force or threat of imminent death, serious bodily injury, extreme pain, or kidnapping to be inflicted on the victim or anyone else; or he compels the victim to submit by any threat that would prevent resistance by a person of ordinary resolution; or he has substantially impaired the victim's power to appraise or control his conduct by administering or employing without the victim's knowledge, drugs, intoxicants or other means for the purpose of preventing resistance; or he knows that the victim suffers from a mental disease or defect which renders the victim incapable of appraising the nature of his own or the offender's conduct; or the victim is unconscious or he knows that the victim is unaware of the act or submits because the

victim falsely supposes that he is the spouse; or the victim is less than 16 years old. Sexual intercourse includes intercourse per mouth or per anus with some penetration, however slight; emission is not required, and upon conviction the perpetrator shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.

(b) **Sexual Assault.**

**DEFINITION:** Sexual assault is any intentional touching of the sexual organs of a male or female person or the breasts of the female person whether the touching is on the bare skin or on intervening clothes.

A person commits sexual assault if he knows sexual contact is offensive to the other person or he knows that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of his own or the perpetrator's conduct, or he knows that the other person is unaware that a sexual act is being committed or he has substantially impaired the other person's power to appraise or to control his knowledge by administering or employing without the other's consent or knowledge any drug, intoxicant or other means for the purpose of preventing resistance; or the other person is less than 16 years old and the offender is his guardian or is otherwise responsible for general supervision of his welfare; or the other person is a child of less than 16 years old and the offender is at least 18 years old; or the other person

is in custody of law or detained in a hospital or other institution and the offender has supervisory or disciplinary authority over him, and the offender performs an act that is within the cited definition of section 5-1-103(4)(b), above. Upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.

(c) **Indecent Exposure.** A person is guilty of indecent exposure, if he exposes his genitals to any person other than his spouse without the person's consent. Upon conviction he shall be sentenced to a term of imprisonment not to exceed 60 days and a fine not to exceed \$300.

(d) **Deviate Sexual Intercourse.** A person is guilty of deviate sexual intercourse if he engage in deviate sexual intercourse or causes another to engage in deviate sexual intercourse and if he compels the other person to participate by force or by threat of imminent death, serious bodily injury, extreme pain, or kidnapping to be inflicted on anyone; or he compels the other person to participate by any threat that would prevent resistance by a person of ordinary resolution; or if he has substantially impaired the other

person's power to apprise or control his own or the perpetrator's conduct by administering or employing without the knowledge of the other person drugs, intoxicants or other means for the purpose of preventing resistance; or he knows that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct or he knows that the other person is unconscious or submits because he is unaware that a sexual act is being committed upon him; or if the other person is less than 16 years old and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500. This law may not be applied unless jurisdiction under 18 USC §1153 has been declined by the United States Attorney.

**(5) Definitions and Other Provisions.**

- (a) The term "deviate sexual intercourse" as used in this Code means any act of sexual gratification between human beings who are not husband and wife involving contact of the genital organs of one in the mouth or anus of another, or any form of sexual intercourse with an animal.
- (b) Provisions of the code relating to sexual offenses shall not apply to conduct between married persons; provided, however, that for the purposes of these provisions, persons living apart under a decree of judicial separation, are not married.
- (c) No prosecution may be instituted or maintained under these provisions on sexual offenses unless the alleged offense was brought to the attention of the public authority within 30 days of its occurrence, or, if the alleged victim is less than 18 years old or otherwise incompetent to make complaint, within three months after a parent or guardian or other competent person specifically interested in the victim learns of the offense.
- (d) Whenever an element of an offense depends on the age of the child being below the age of 16, it is a defense that the actor reasonably believed the child to be older than 16 years old, if the child is 14 years of age or older. If the child is under 14 years of age, this defense is not available to the defendant.
- (e) In any prosecution for a sexual offense defined herein, the court shall weigh the value of evidence concerning the past sexual activities of the victim against its prejudice and its embarrassment to the victim. If the court finds that the probable effect of the evidence to impeach the victim's testimony is far outweighed by the harm which it causes to the victim, such evidence may be deemed inadmissible.



**(6) Harassment: Harassment by Stalking.**

- (a) A person commits harassment if, with intent to harass, annoy, or alarm another person, he or she:
  - (i) Strikes, shoves, kicks, or otherwise touches a person or subjects him or her to physical contact; or
  - (ii) Initiates communication with a person, anonymously or otherwise by telephone or by computer e-mail, in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion, or proposal by telephone which is obscene; or
  - (iii) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or
  - (iv) Makes repeated communications at inconvenient hours that interferes in the use and enjoyment of another's home or private residence or other private property; or
- (b) Any act prohibited by subsection (1) of this section may be deemed to have occurred or to have been committed at the place at which the telephone call or computer e-mail was received.
- (c) A person commits harassment by stalking if, directly or indirectly through another person, such person knowingly:
  - (i) Makes a credible threat to another person and, in connection with such threat, repeatedly follows that person or a member of that person's immediate family; or
  - (ii) Makes a credible threat to another person and, in connection with such threat, repeatedly makes any form of communication with that person or a member of that person's immediate family, whether or not a conversation ensues.
- (d) The following definitions apply to this section:
  - (i) "Credible threat" means a threat or physical action that would cause a reasonable person to be in fear for the person's life or safety or the safety of his or her immediate family.
  - (ii) "In connection with" means acts occurring either before, during, or after the credible threat; and

(iii) "Obscene" means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus, or excretory functions.

(iv) "Repeatedly" means on more than one occasion.

(e) Upon conviction the offender may be sentenced to a term of imprisonment not to exceed 1 year and/or a fine not to exceed \$5,000.

#### **5-1-104. Offenses Against Property.**

##### **(1) Theft, Robbery, Burglary and Related Crimes.**

(a) **Theft.** A person commits theft when he knowingly obtains or exercises control over the property or services of another (tangible or intangible) without authorization or by threat or deception or, knowing the property or service to be stolen and uses, conceals or abandons such property so as to deprive the owner or guardian of its use or benefits, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500, and may be required to make restitution to the victim.

(b) **Theft of Property Lawfully Obtained.** A person commits the crime of theft of property lawfully obtained when he obtains lawful possession of property for temporary use and intentionally fails to reveal the whereabouts of or to return said property to the true owner or his representative or the person from whom he has received it within 72 hours after the time of which defendant agreed to return it, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.

##### **(c) Affirmative Defenses and Presumptions Under Prosecution for Theft.**

(i) It is an affirmative defense to prosecution for theft that the defendant:

(A) Acted under a reasonable claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or

(B) Obtained or exercised control over the property or service honestly and reasonably believing that the owner if present would have consented.

- (ii) 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
  - (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.
  
- (d) **Robbery.** A person is guilty of robbery if in the course of committing a theft he inflicts bodily injury upon another or threatens another with or purposely puts him in fear of immediate bodily injury or commits or threatens to commit an assault or battery. An act shall be deemed in the course of Committing a theft if it occurs in an attempt to commit a theft or in flight after the attempt or commission of a theft. A person who is convicted of robbery shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.
  
- (e) **Burglary.** A person commits the crime of burglary if he enters or remains unlawfully in a building or occupied structure, with the purpose of committing an offense therein. It is an affirmative defense to a prosecution for burglary that the building or structure was abandoned. Upon conviction of burglary, the actor shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500, and may be required by court order to make restitution to the victim.
  
- (f) **Receiving Stolen Property or Services.**
  - (i) A person is guilty of receiving stolen property or services if he receives, retains or disposes of property of another knowing that it has been stolen, or believing that it has probably been stolen, or who conceals, sells, withholds or aids in concealing the property to be stolen, with the purpose of depriving the owner thereof.
  
  - (ii) The requisite knowledge that the property or services are stolen is presumed in the case of a person who:
    - (A) Is found in possession or control of other property stolen on another occasion; or
  
    - (B) Is found in possession of property or services stolen when no satisfactory explanation of such possession is made;

(C) Acquires for consideration property which he knows or should know is far below its reasonable value.

(iii) As used in this section, “receives” means acquiring possession, control or title, when lending on the security of the property.

(iv) Upon conviction of receiving stolen property or services, the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.

(g) **Trespass.** A person commits the crime of trespass if he unlawfully and knowingly enters or remains upon the premises on which he is not otherwise privileged to enter or remain. Upon conviction, the offender shall be sentenced to a term of imprisonment not to exceed 30 days and a fine not to exceed \$150.

(h) **Illegal Sale and Purchase of Tribal Property.** A person is guilty of illegal sale and purchase of tribal property when he sells or buys or in any way disposes of or acquires through purchase of trust or tribal property or the increase thereof, without the consent of proper authorities, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 90 days and a fine not to exceed \$250.

(2) **Fraudulent and Related Practices.**

(a) **Fraud.** Any person commits fraud when he by willful misrepresentation, deceit, by false interpreting, or by use of false weights or measures obtains any money or other property, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months, and a fine of \$500, and may be ordered to make restitution to the victim.

(b) **Extortion.**

(i) A person is guilty of extortion if he purposely obtains the property of another by threatening to:

(A) Inflict bodily injury on anyone or commits 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 his credit or business repute; or

- (D) Take or withhold action as an official, or cause an official to take or withhold some 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 work to the detriment of the victim.
- (ii) It is an affirmative defense to prosecution based on paragraphs B, C, or D, that the property obtained by threat of accusation, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification for harm done.
- (iii) Conviction of extortion carries a sentence of imprisonment not to exceed 6 months and a fine not to exceed 500.
- (c) **Embezzlement.** A person commits the crime of embezzlement when he has lawful custody of property not his own and appropriates the same to his own use with intent to deprive the owner thereof. Embezzlement includes, but is not limited to, the spending of a minor's fund or funds for other than the purpose for which the funds were placed in the custody of the parents or guardian, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500, and may be required to make restitution.
- (d) **Forgery.** A person commits forgery when he, with intent to defraud, falsely signs, executes, makes, completes, alters or utters any written instrument, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.
- (e) **Writing Bad Checks.** A person is guilty of writing bad checks if he issues or passes a check or similar sight order for the 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, and (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 the lack of funds, upon presentation for payment within 30 days of issue, and the issuer thereafter failed or was intentionally unavailable to make good within 10 days after such refusal

and receives notice thereof. Upon conviction thereof, the issuer shall be sentenced to a term of imprisonment not to exceed 90 days and a fine not to exceed \$500.

- (f) **Making a False Credit Report.** A person is guilty of making a false credit report if he knowingly makes a materially false or misleading statement to obtain property or credit for himself or another or to keep some other person from obtaining credit, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 90 days and a fine not to exceed \$250.
- (g) **Defrauding Creditors.** Any person is guilty of defrauding creditors if he:
  - (i) Destroys, removes, steals, encumbers, transfers or otherwise deals with property subject to a security interest with the purpose of hindering enforcement of that interest; or
  - (ii) 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 creditors; he destroys, removes, encumbers, transfers or otherwise deals with any property with the purpose of defeating or obstructing the operation of any law relating to administration of property for the benefit of creditors; or
  - (iii) Knowingly falsifies any writing or record relating to the property; or
  - (iv) Knowingly misrepresents or refuses to disclose to a person entitled to administer property for the benefit of creditors 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. Upon conviction, he shall be sentenced to a term of imprisonment not to exceed 90 days and a fine not to exceed \$300.
- (h) **Disposing of Property of an Estate.** A person commits disposing of property of an estate if he, without proper authority or with intent to deprive an heir of his rightful claim, disposes of any property of an estate (other than burial of personal effects with the deceased or burning of personal effects) prior to determination of heirs by the proper authorities, and upon conviction shall be sentenced to a term of imprisonment not to exceed 90 days and a fine not to exceed \$500.
- (i) **Criminal Usury.**
  - (i) A person is guilty of criminal usury when he knowingly engages in or directly or indirectly provides financing for the business of making

loans or purchases at a rate of interest or consideration higher than the following:

- (A) If the amount to which the interest applies is less than \$100, or the period of the loan or financing is less than 1 year, the rate of interest shall not exceed a 24% per annum simple interest rate.
  - (B) If the amount to which the interest applies is greater than \$100, or the period of the loan or financing is greater than 1 year, the rate of interest shall not exceed an 18% per annum simple interest rate.
- (ii) In computing the interest rate, the following will be considered to be part of the interest charged:
- (A) All charges payable directly or indirectly by the person receiving the credit as an incident to the extension of credit, including any of the following types of charges: (a) time price differential, (b) service, carrying or other charge, however denominated: (i) premium or other charge for any guaranty of insurance protecting the seller against the buyer's default or other credit loss, (ii) charges incurred for investigating the collateral or credit of the borrower, and (iii) commissions or fees charged for obtaining credit.
- (iii) Upon conviction, the offender may be sentenced to a term of imprisonment not to exceed 3 months and a fine not to exceed \$500.

**(j) Deceptive Business Practices.**

- (i) A person is guilty of deceptive business practices if, in the course of business, he:
  - (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 service; or
  - (C) Takes or attempts to take more than the representative quantity of any commodity or service when he as buyer furnishes the weight or measure; or

- (D) Sells, offers or exposes for sale adulterated or mislabeled commodities;
    - (I) “Adulterated” means varying from the standard of composition or quality prescribed by law or commercial usage;
    - (II) “Mislabeled” means varying from the standard of truth or disclosure and labeling described 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.
- (ii) It is an affirmative defense to prosecution under this section if the defendant proves by a preponderance of the evidence that his conduct was not knowingly or recklessly deceptive.
  - (iii) Upon conviction, the offender may be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.

**(3) Destruction of Property.**

**(a) Arson.**

- (i) A person is guilty of arson if he starts a fire or causes an explosion with the purpose of destroying a building or occupied structure of another; or with the purpose of destroying or damaging any property whether his own or another’s to collect insurance for such loss, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500 and take restitution to the victim.
- (ii) Definitions:
  - (A) “Occupied structure” includes a boat, trailer, airplane, or vehicle, structure or place adapted for overnight accommodation of persons or for carrying on business therein whether or not the person is actually present.



- (B) “Property of another” is any property of anyone other than the accused, either possessory or proprietary interest therein.
- (b) **Reckless Burning.** A person is guilty of reckless burning if he recklessly starts a fire or causes an explosion which endangers human life; or damages property of another by reckless use of fire; or recklessly causes an explosion; or having started a fire, whether recklessly or not and knowing that it is spreading and will endanger the life or property of another, he fails to take reasonable measures to put out or control the fire or fails to give a prompt fire alarm, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 60 days and a fine not to exceed \$250 and make restitution to the victim.
- (c) **Criminal Mischief.** A person commits the crime of criminal mischief if he intentionally damages the real or personal property of one or more persons in the course of a single criminal episode. If the aggregate damage to the real or personal property is less than \$100, the convicted person is subject to a term of imprisonment not to exceed 30 days and a fine not to exceed \$150. If the aggregate damage is more than \$100, the convicted person is subject to a term of imprisonment not to exceed 90 days and a fine not to exceed \$300).
- (d) **Defacing Property.** A person commits the crime of defacing property if he defaces or causes, aids or permits the defacing of any public, tribal or private property, including but not limited to signs, without the consent of the owner of such property, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 30 days and a fine not to exceed \$150.
- (e) **Cutting Fence.** A person commits the crime of cutting fence if he willfully and wrongfully cuts or destroys a fence belonging to another person or to the Southern Ute Indian Tribe, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 30 days and a fine not to exceed \$100, and may be ordered to make restitution to the victim.
- (4) **Violation of the Timber Use Policy.**
- (a) A person is guilty of violating the Timber Use Policy of the Southern Ute Indian Tribe if he:
- (i) Fails to obtain from the Superintendent, Bureau of Indian Affairs, the appropriate permit before cutting timber on the Southern Ute Indian Reservation; or

- (ii) Violates the provisions or restrictions of any permit issued to him by the Superintendent, Bureau of Indian Affairs, for cutting timber on the Southern Ute Indian Reservation.
- (b) Violation of the Timber Use Policy of the Southern Ute Indian Tribe shall make the offender subject to a sentence of not more than 6 months' imprisonment or a fine of not more than \$500 or both; and in addition to any prescribed penalties, such violation may be punishable by revocation of all timber-cutting permits. In addition, confiscation and forfeiture of all timber taken or possessed illegally may result, following its seizure by the arresting officer upon probable cause, without liability to the Southern Ute Indian Tribe. Additionally, the arresting officer, if he has probable cause, may seize such timber-cutting equipment as has been used as an instrument for the violation.
- (c) Where the Timber Use Policy provides for the cutting of tree species by tribal members for religious or ceremonial purposes without the requirement of a permit from the Superintendent, Bureau of Indian Affairs, subparagraph (4)(a)(i) above is not applicable.

**5-1-105. Offenses Against the Family.**

- (1) **Endangering the Welfare of a Child.** A person commits endangering the welfare of a child if he is a parent, guardian or other person supervising the child and knowingly violates his duty of care or intentionally leaves the child without appropriate care or otherwise neglects to care for the child in any manner which threatens serious harm to the physical, emotional or mental well being of the child.
- (2) **Contributing to the Delinquency of a Minor.** A person commits contributing to the delinquency of a minor when he willfully, by action or omission, permits a child to violate the Southern Ute Indian Tribal Code or applicable Tribal Council resolutions or ordinances, including status offenses, such as truancy and curfew violations.
- (3) **Bigamy.** A person commits bigamy if, knowing that he has a husband or wife or knowing the other person has a husband or wife, he purports to marry another person; provided that no person shall be guilty thereof who believes that a prior spouse is dead or whose prior spouse shall have been continually absent for seven successive years without being known to be living.
- (4) **Prohibited Sexual Contact.** A person commits prohibited sexual conduct if he engages in sexual relations with an ancestor, descendant, brother, sister, stepchild, aunt, uncle, niece, nephew or first cousin, or by engaging in sexual

relations with a stepchild or a child whom he has adopted, whether legally or pursuant to tribal custom.

(5) **Child Abuse.**

- (a) Any person commits child abuse if such person causes an injury to a child, or engages in a continued pattern of conduct that results in malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries that ultimately results in the death of a child or serious bodily injury to a child.
- (b) A child's parent, legal guardian or custodian, commits the crime of child abuse if he causes injury to a child by failing to take action to provide the child food, clothing or shelter that a responsible, prudent person would provide.
- (c) A child's parent, legal guardian or custodian who chooses and legitimately practices treatment by spiritual means, through treatment by a traditional medicine person or prayer, shall not be considered to have injured or endangered the child and to be criminally liable solely because he fails to provide medical treatment for the child, unless such person inhibits or interferes with the provision of medical treatment for the child in accordance with a court order, or unless there is an additional reason other than health care, to consider the child to be injured or endangered.

- (6) **Privilege.** Any privilege asserted between patient and physician and between husband and wife shall not be available for excluding evidence in any prosecution for a violation of this section.

**5-1-106. Offenses Against Public Order and Decency.**

(1) **Disorderly Conduct.**

- (a) A person is guilty of disorderly conduct if he intentionally, knowingly or recklessly:
  - (i) Engages in fighting, threatening or violent behavior; or
  - (ii) Makes unreasonable noises or offensively coarse utterances, gestures or displays; or
  - (iii) Creates a hazardous or physically offensive condition; or
  - (iv) Appears in public in a drunken or intoxicated condition and does any of the following:

- (A) Bothers, disrupts or otherwise intrudes upon another person or a group of persons; or
  - (B) Appears or is found in an area set aside for religious or ceremonial activities when such area has been designated by the Southern Ute Indian Tribal Council for use free of the consumption of alcoholic beverages, drugs, or the presence of intoxicated persons during the period of such religious or ceremonial activity.
- (b) “Public” means affecting, or likely to affect, persons in a place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, the common areas of schools, hospitals, apartment houses and office buildings, transport facilities, businesses open to the public and places of entertainment or amusement.
  - (c) Upon conviction of disorderly conduct, a person shall be sentenced for a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.
- (2) **Disturbing the Peace.** A person commits the crime of disturbing the peace when he engages in fighting in a public or private place, disturbs or annoys any public or private or religious assembly or engages in any other act of public indecency, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 30 days and a fine not to exceed \$250 on the first offense and upon subsequent convictions a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.
- (3) **Liquor Violation.**
- (a) A person is guilty of liquor violation if he shall sell, barter, transport or manufacture any alcoholic beverage and is not authorized to sell such liquor unless he is in possession of a legal license or permit from the Southern Ute Indian Tribal Council and the United States Government to maintain such activity, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 60 days and a fine not to exceed \$250.
  - (b) Any provision of this article to the contrary notwithstanding, a head of a family may produce for family use and not for sale such amount of vinous liquor as he may use as is exempt from federal Excise Tax.
  - (c) **Illegal Possession or Consumption of an Alcoholic Beverage by an Underage Person.** Any person under 21 years of age who possesses or consumes an Alcoholic Beverage commits illegal possession or

consumption of an Alcoholic Beverage by an underage person, and upon conviction thereof, the offender shall be sentenced to a term of imprisonment not to exceed 60 days and a fine not to exceed \$250.

- (i) Possession of an Alcoholic Beverage means that a person has or holds any amount of an Alcoholic Beverage anywhere on his person, or that a person owns or has custody of an Alcoholic Beverage, or has an Alcoholic Beverage within his immediate presence and control.
- (d) **Open Container Law.** A person is guilty of violation of the open container law if he shall be in any public place and have any container which holds alcoholic beverage, 3.2% or more by volume. And such container is open, and upon conviction he shall be sentenced to a term of imprisonment not to exceed 10 days and a fine not to exceed \$50.
- (4) **Shooting Offenses.** A person commits a shooting offense if he fires a gun within the Southern Ute Indian Reservation with careless disregard for human life or property, and upon conviction thereof the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500. Firearm shall include any hand gun, rifle, or shotgun of any gauge.

#### **5-1-107. Offenses Against the Administration of Government.**

##### **(1) Abuse of Office.**

- (a) **Bribery.** A person commits the crime of bribery if he offers, confers or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion, or other action in his official capacity or while being a public servant solicits, accepts or agrees, to accept any pecuniary benefit upon an understanding that his vote, opinion, judgment, exercise of discretion, or other action as a public servant will thereby be influenced, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.
- (b) **Official Oppression.**
  - (i) A person is guilty of official oppression if, when acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity and knowing that his conduct is illegal, he:
    - (A) Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or

- (B) Denies or impedes another in the exercise or enjoyment of any right, power or immunity.
  - (ii) Upon conviction, the offender shall be sentenced to a term of imprisonment not to exceed 6 months and to a fine not to exceed \$500.
  - (c) **Official Misconduct.** A person is guilty of official misconduct if, being a public servant and with intent to benefit himself or another or harm another, he knowingly commits an unauthorized act which purports to be an act of his office or knowingly refrains from performing a nondiscretionary duty imposed upon him by law or clearly inherent in the nature of his office; or, being a public servant and knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant which information has not been made public, he acquires or divests himself of a valuable interest in any property, transaction or enterprise which may be affected by such action or information; or speculates or wagers on the basis of such action or information or knowingly aids another to do any of the foregoing, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 3 months and a fine not to exceed \$500.
- (2) **Falsification in Official Matters.**
- (a) **Perjury.** A person commits perjury who willfully in any official proceeding falsely swears or interprets, or makes a sworn statement or affidavit, knowing the same to be untrue, or shall induce or procure another person to do so, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.
  - (b) **False Alarm, False Charge, and False Information.** A person is guilty of false alarm if he:
    - (i) Knowingly causes an alarm of an emergency to be transmitted to or within any organization, to any official or volunteer, for dealing with emergencies involving danger to life or property; or
    - (ii) Gives false information to any law enforcement officer with the purpose of implicating another in an offense; or
    - (iii) Reports to law enforcement authority an offense or other incident within their concern, knowing or believing that it did not occur; or

- (iv) Pretends to furnish law enforcement authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident; or
- (v) Gives a false name or address to law enforcement officers in the lawful discharge of their official duties.

Upon conviction, the offender shall be sentenced to a term of imprisonment not to exceed 30 days and a fine not to exceed \$300.

- (c) **Tampering with Witnesses.** A person is guilty of tampering with witnesses if, believing that an official proceeding or investigation is pending or about to be instituted, he:
  - (i) Attempts to induce or otherwise causes a person to:
    - (A) Testify or inform falsely;
    - (B) Withhold any testimony, information, document or things; or
    - (C) Elude legal process summoning him to testify or supply evidence; or
    - (D) Absent himself from any proceeding or investigation to which he has been legally summoned.
  - (ii) Harms another by an unlawful act in retaliation for anything done by another in his capacity as a witness or informant.
  - (iii) Solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in this section.

Upon conviction, the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.

- (d) **Tampering with Evidence.** A person is guilty of tampering with evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he alters, destroys, conceals or removes any record, document or thing with the purpose of impairing its veracity or availability in such proceeding or investigation; or makes, presents or uses any record or thing knowing it to be false, with the purpose of misleading a public servant who is or may be engaged in such proceeding or investigation, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 3 months and a fine not to exceed \$300.

- (e) **Impersonating a Peace Officer or Public Official.** A person commits the crime of impersonating an officer of the Southern Ute Tribal Police, BIA police or county, state or federal law enforcement officer, or any elected or appointed officer of the Southern Ute Indian Tribe if he falsely pretends to be a peace officer or public servant and performs an act in that pretended capacity, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 30 days and a fine not to exceed \$200.

(3) **Obstructing Governmental Operations.**

- (a) **Obstructing Governmental Operation.** A person is guilty of obstructing governmental operation if he uses force, violence or intimidation, or engages in any other unlawful act with the purpose of interfering with a public servant performing or purporting to perform an official function; or he purposely obstructs, impairs or prevents the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with a crime, refusal to submit to arrest, failure to perform a duty other than an official duty or any other means of avoiding compliance with law without affirmative interference with governmental functions. The offender, upon conviction of obstructing governmental operation, shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.
- (b) **Resisting Arrest.** A person commits a crime of resisting arrest if he intentionally prevents or attempts to prevent a peace officer, acting under the color of his official authority, from effecting an arrest of the actor or another by using or threatening to use physical force or violence against a peace officer or another or using any means which creates a substantial risk of causing physical injury to the peace officer or another, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.
- (c) **Obstructing Justice.**
  - (i) A person is guilty of obstructing justice if, with the purpose of hindering the apprehension, prosecution, conviction or punishment of another for the commission of an offense, he:
    - (A) Harbors or conceals the other; or



- (B) Provides or aids in providing a weapon, transportation, disguise or other means of avoiding apprehension of 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 person.
- (ii) Upon conviction of obstructing justice, the offender shall be sentenced to a term not to exceed 6 months and a fine not to exceed \$500.
- (d) **Refusing to Aid an Officer.** Any person commits a crime of refusing to aid an officer if upon command by a person known to him to be a member of the Indian police, tribal police, or other police officer of the United States Indian Service, he unreasonably fails to aid such peace officer in an emergency situation in effecting an arrest or preventing the commission by another of any offense, and upon conviction shall be sentenced to a term of imprisonment not to exceed 10 days and a fine not to exceed \$100.
- (e) **Hindering a Peace Officer or Fireman in the Performance of His Duty.** A person commits the crime of obstructing a peace officer or fireman if he intentionally obstructs, impairs or hinders the enforcement of the penal law or the preservation of the peace by a peace officer acting under color of his authority, but not in making an arrest, or the prevention, control or abatement of fire by a fireman acting under color of his official authority by using or threatening to use violence, force, or physical interference, or obstacle, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 30 days and a fine not to exceed \$200.
- (f) **Escape.** A person commits a crime of escape if, while in custody or confinement and held for or charged with, or convicted of a crime, he escapes from said custody or confinement, and upon conviction shall be

sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.

- (g) **Providing Contraband.** A person commits the offense of providing contraband if he knowingly provides a person in official detention with alcoholic beverages, drugs, weapons, implements of escape, or any other thing or substance which the offender knows is unlawful or improper for the detainee to possess, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.
- (h) **Bail Jumping.** A person is guilty of bail jumping if, having been released on bail or on his own recognizance by court order or other lawful authority upon condition that he subsequently appear on a charge of an offense, he fails without just cause to appear in person or in the case, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 90 days and to a fine not to exceed \$300.
- (i) **Disobedience to Court Orders.** A person commits the offense of disobedience to court orders when he willfully disobeys any order, subpoena, warrant or command duly issued, made or given by the Tribal Court or any Tribal Court officer, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 90 days and a fine not to exceed \$250. Upon conviction of a second offense under this section 5-1-107(3)(i), the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.
- (j) **Compounding.** A person commits the crime of compounding if he accepts or agrees to accept any pecuniary benefit or consideration for refraining from seeking prosecution of an offender or refraining from reporting to law enforcement authorities the commission or suspected commission of any crime or information relating to any crime, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.
- (k) **Doing Business Without a License.** A person commits the crime of doing business without a license if he 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, and upon conviction the offender shall be fined up to \$500.
- (l) **Abuse of Process.** A person is guilty of abuse of process if he repeatedly files complaints under the Southern Ute Indian Tribal Code and subsequently refuses to cooperate with tribal authorities, and upon

conviction the offender shall be subject to a fine of \$500 plus all costs associated with the complaint.

**(m) Violation of a Protection Order.**

- (i) A person commits the crime of violation of a protection order if, after being personally served with a protection order or having otherwise acquired actual knowledge of the contents of any such order from the court that issued the protection order, the person violates any provision of said protection order.
- (ii) For purposes of this subsection, “protection order” shall mean any order issued by the Tribal Court pursuant to Article 2, Title 2, SUITC; Section 5-1-110 of this Title; or issued by another court and entitled to full faith and credit pursuant to Article 2, Title 2, SUITC and federal law.
- (iii) The penalty for crimes committed under this section shall be up to one year in prison and up to \$5,000 in fines or up to the maximum penalty allowed pursuant to federal law.

**5-1-108. Offenses Relating to Animals.**

**(1) Cruelty to Animals.** A person is guilty of cruelty to animals:

- (a) If he knowingly, recklessly or negligently:
  - (i) Tortures or seriously overworks an animal; or
  - (ii) Fails to provide necessary foods, care or shelter for an animal in his custody; or
  - (iii) Abandons an animal in his custody; or
  - (iv) Transports or confines an animal in a cruel manner; or
  - (v) Kills, injures or administers poison to an animal without legal privilege to do so; or
  - (vi) Causes one animal to fight with another.
- (b) 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 experiment 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.

- (c) Upon conviction of cruelty to animals, a person shall be sentenced to a term of imprisonment not to exceed 90 days or a fine not to exceed \$500 or both.
  
- (2) **Failure to Register Dogs and Cats.** A person commits the crime of failure to register dogs and cats if he fails to register any dog or cat owned by him or in his possession according to this Code. No dog or cat will be registered unless there is a current valid certificate of rabies vaccination, and upon registration all animals shall be required to wear a rabies tag. Any dog or cat not so registered or not wearing a tag attached to a collar and found running at large may be picked up by the law enforcement officers and if not claimed within 9 days may be disposed of. Upon conviction, the offender shall be sentenced to a term of imprisonment not to exceed 10 days and a fine not to exceed \$50 plus the cost of extermination of the animal.
  
- (3) **Livestock Offenses.**
  - (a) A person is guilty of a livestock offense if he:
    - (i) Knowingly or recklessly refuses or fails to mark or brand his livestock when such is required in the interest of livestock identification or directed by tribal or governmental officials; or
    - (ii) Alters, obliterates, removes a brand or mark, or misbrands or mismarks livestock with the purpose of deceiving another for any reason; or
    - (iii) Knowingly permits his livestock to graze or trespass on the property of another or of the Tribe without permission to do so or in excess of the permitted time; or
    - (iv) Knowingly refuses to sell, dispose or otherwise remove sick or otherwise infectious livestock from common grazing areas or areas where there is substantial danger of infecting other livestock; or
    - (v) Knowingly fails to treat or dispose of a sick animal where there is substantial danger of infecting other animals, or
    - (vi) Fails to dip, inoculate or otherwise treat livestock in the manner which the Tribal Council or its designated representative shall direct; or

- (vii) Makes a false report of livestock owned; or
  - (viii) Purposely obstructs or interferes with a livestock roundup; or
  - (ix) Willfully or negligently allows livestock to occupy or graze on cultivated and enclosed lands of another or on tribal grazing areas without permission; or
  - (x) Allows a stud to run at large.
- (b) 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 a reasonable search, no conviction shall be found for subsection i, iii, iv, v or vi set forth above unless the owner or person having custody of the livestock involved is given 48 hours' notice of his alleged violation and after such period of notice he has not remedied the alleged violation.
  - (c) 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, of another, or the health of other livestock on the reservation and that immediate action is necessary to protect such property from serious harm. A reasonable fee for the care of such animals may be collected prior to their release. If for health reasons such livestock must be destroyed, the court may order such destruction of animals pursuant to a certificate by a veterinarian. The Southern Ute Tribe or any of its agents shall not be held liable. The Tribe may auction animals which are unclaimed after due diligence in notifying owners, and may keep the proceeds of said sale or may apply the proceeds to defray the expense of damages caused by the impounded livestock, the cost of keeping said livestock and their sale.
  - (d) All unbranded cattle over 6 months old shall be presumed to be the property of the Southern Ute Indian Tribe and its livestock enterprise. The burden of proving otherwise shall be upon the person found in possession of such unbranded cattle on the reservation.
  - (e) A person upon conviction of a livestock offense shall be sentenced to a term of imprisonment not to exceed 90 days and a fine not to exceed \$300, and may be ordered to make restitution for damages caused by said livestock.
  - (f) Persons who observe stock running loose in such a manner so as to obstruct a public highway or otherwise become a public nuisance shall have a duty to call the Southern Ute Indian Tribal Police immediately.

**5-1-109. Offenses Against Public Health, Safety, Welfare and Morals.**

**(1) Offenses Relating to Public Health, Safety and Welfare.**

(a) **Adulteration of Food or Drink.** A person is guilty of adulteration of food or drink if he manufactures, sells, keeps or offers for sale any food, drug or drink in the making of which any harmful substance is used, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 30 days and a fine not to exceed \$500.

(b) **Waters Offense.**

(i) A person is guilty of waters offense if he:

(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 persons; 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 amounts without lawful authority to do so and in violation of the right of any other person; or

(D) Knowingly causes or allows any substance harmful or potentially harmful to human life to enter into a source of water for domestic purposes. If anyone is spraying in the ditches, there is a duty to notify the adjacent landowners and any others reasonably calculated to be adversely affected as the result of such spraying; or

(E) Intentionally pollutes or allows pollution which he knows to be harmful to enter any stock tank, stock watering pond, or any water from which he knows or should know stock will be drinking.

(ii) The presence of lawful authority to do any of the above-enumerated acts need not be disproved by the prosecution, but shall be presented as an affirmative defense.

- (iii) An offender upon conviction of a waters offense shall be sentenced to a term of imprisonment not to exceed 90 days and to pay a fine not to exceed \$500.
- (c) **Littering.** A person commits the crime of littering if he throws, dumps, places or deposits upon the lands of another or any tribal or public property or highway, street, road or other area not his own without lawful permission, any garbage, debris, junk, carcasses, trash, refuse or other substances of any nature whatsoever, and upon conviction therefor the offender shall be sentenced to a term of imprisonment not to exceed 10 days in jail for the first offense and 30 days thereafter and a fine not to exceed \$500, and may be required to remove his litter from the area.
- (d) **Maintaining a Public Nuisance.** Any person maintains a public nuisance when his property is in such condition so as to injure, endanger the health, safety, comfort or property of his neighbors, and upon conviction thereof the offender shall be sentenced to a term of imprisonment not to exceed 5 days and may be required to remove such nuisance at his expense when ordered by the court.
- (e) **Abandonment of a Motor Vehicle.** A person commits the crime of abandonment of a motor vehicle if he leaves any motor vehicle upon a street, highway, right-of-way or other public property, or upon any private property without the express consent of the owner or person in lawful charge of such private property, and upon conviction the offender shall be ordered to pay all costs of towing the abandoned motor vehicle to a place of disposal and a fine not to exceed \$100.
- (f) **Emergency Telephone Abuse.**
  - (i) A person commits emergency telephone abuse if he:
    - (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 to summon police, medical or other aid in case of an emergency, unless the actor is already using said telephone to report an emergency; or
    - (B) Asks for or requests the use of a party line or public pay phone on the pretext that an emergency exists knowing that no emergency exists.
  - (ii) "Emergency" means a situation in which property or human life or safety is in jeopardy and the prompt summoning of aid is or

reasonably appears to be essential to preservation of human life, safety or property.

(iii) An offender upon conviction of emergency telephone abuse shall be sentenced to a term of imprisonment not to exceed 10 days and a fine not to exceed \$50.

(g) **Abandonment of Ice Box.** A person commits the crime of abandonment of ice box when he abandons an ice box or refrigerator without dismantling the locking mechanism or taking the doors off said ice box or otherwise making it impossible to become locked inside said ice box. The term “ice box” shall include all refrigerators, freezers and other appliances used mainly for refrigeration. Upon conviction, the offender shall be sentenced to a term of imprisonment not to exceed 30 days and a fine not to exceed \$500.

(2) **Offenses Against Public Morals.**

(a) **Pimping.** A person commits a crime of pimping if such person knowingly lives on or is supported or maintained in whole or in part by money or other thing of value earned, received, procured or realized by any other person through prostitution, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.

(b) **Prostitution.** A person commits the crime of prostitution if such person performs, offers or agrees to perform any act of sexual intercourse or deviate sexual conduct with any person not his spouse in exchange for money or other thing of value, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 3 months and a fine not to exceed \$250.

(c) **Patronizing a Prostitute.** A person commits the crime of patronizing a prostitute if such person engages in an act of sexual intercourse or of deviate sexual conduct with a prostitute or enters or remains in a place of prostitution with intent to engage in an act of sexual intercourse or deviate sexual conduct with a person not his spouse, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 3 months and a fine not to exceed \$250. Deviate sexual conduct is defined in Section 5-1-103(4)(d), above.

(d) **Keeping a Place of Prostitution.** A person commits the crime of keeping a place of prostitution if such person has or exercises control over the use of any place which offers seclusion or shelter for the practice of



prostitution and knowingly grants or permits the use of such place or permits the continued use of such a place after becoming aware of facts or circumstances from which he should reasonably know that the place is being used for the purposes of prostitution, and upon conviction the offender shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.

- (e) **Carrying a Concealed Weapon.** A person commits the crime of carrying a concealed weapon when he knowingly and unlawfully in a public place carries a knife with a blade over 4 inches in length, firearm or other dangerous instrument concealed on or about his person, and upon conviction the offender's weapon shall be confiscated; and the offender shall be sentenced to a term of imprisonment not to exceed 30 days and a fine not to exceed \$300. It is an affirmative defense if the accused has a permit to carry a concealed weapon issued by the Southern Ute Indian Tribal Police.
- (f) **Drug Abuse.** A person is guilty of drug abuse if he possesses, sells, trades, transports, gives away or manufactures an article of substance which contains any quantity of a substance classified in the Federal Controlled Substances Act, or sells, barter, cultivates, plants, produces, gives away or possesses marijuana or violates any provision of the Federal Controlled Substances Act.
  - (i) "Marijuana" includes all parts of the plant *Cannabis sativa* L., whether growing or not, the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, or any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, fiber, oil or cake except the resin extracted therefrom.
  - (ii) Jurisdiction of the Southern Ute Indian Tribal Court shall be concurrent and not exclusive over any offense for which the federal courts may also have jurisdiction. The Southern Ute Indian Tribal Court shall order delivery to proper federal authorities for prosecution, any drug offender for whom the federal authorities certify they will pursue prosecution in federal court.
  - (iii) Drug abuse carries a penalty of \$300 and 3 months' imprisonment if the amount of substance involved is so small as to support a reasonable inference that the substance involved was held or possessed for purpose of personal consumption only and not for sale

or distribution; otherwise a person convicted of drug abuse shall be sentenced to a term of imprisonment not to exceed 6 months and a fine not to exceed \$500.

(g) **Abuse of Psychotoxic Chemical Solvents.**

- (i) A person is guilty of abuse of psychotoxic chemical solvents if, for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of his brain or nervous system, he purposely:
  - (A) Smells or inhales the fumes of any psychotoxic chemical solvents; or
  - (B) Possesses, purchases or attempts to possess or purchase any psychotoxic chemical solvents with intent to violate this section; or
  - (C) Knowing or believing that the purchaser or another intends to use the psychotoxic chemical solvent in violation of this section, he sells or offers to sell any psychotoxic chemical solvent, and upon conviction the offender shall be subject to a fine not to exceed \$500 and to a term of imprisonment not to exceed 6 months.
- (ii) **Definition:** “Psychotoxic chemical solvents” include any glue, cement or other substances 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 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 the container is the same substance placed therein by the manufacturer or producer.