

TITLE 5

SOUTHERN UTE INDIAN TRIBAL CODE

CRIMINAL CODE

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Exhibit A - Criminal Penalty Schedule

TITLE 5

SOUTHERN UTE INDIAN TRIBAL CODE

CRIMINAL CODE

ARTICLE 1. PURPOSE AND DEFINITIONS

5-1-101. Purpose. The Tribe recognizes that its strength and sovereignty is grounded in its members and that a prosperous future requires a safe and healthy community. Violence and criminal activity are serious behaviors impacting the Southern Ute Tribal community's health, safety, and welfare. This Code is intended to provide for the safety and protection of the community, while ensuring offenders are held accountable yet provided an appropriate opportunity for rehabilitation. The Tribe further recognizes the criminal justice system and punitive responses may not always best address criminalized behaviors, such as substance abuse and addiction. Although federal law continues to criminalize drug use and possession, including marijuana, it is important to the Tribe that Indians be treated equally as non-Indians under applicable state law. To that end, when enforcing this Criminal Code, the Tribe will strive to provide a range of alternatives to criminal prosecution and conviction, including but not limited to the possibility of deferred prosecution, treatment, and diversion programs.

5-1-102. Definitions.

- (1) **Act** means a voluntary bodily movement and includes words and possession of property.
- (2) **Adulterated** means varying from the standard of composition or quality prescribed by law or commercial usage.
- (3) **Animal** means any living creature, other than a human, including a certified police working dog, a police working horse, and a service animal.
- (4) **Bodily injury** means physical pain, illness, or any impairment of physical or mental condition.
- (5) **Child** means any person under the age of 18 years.
- (6) **Conduct** means an act or omission and its accompanying state of mind or, where relevant, a series of acts or omissions.
- (7) **Contraband** means any property that is unlawful in itself, used for any unlawful purpose, or used in connection with or derived from any unlawful property or transaction under this Code.

- (8) **Controlled substance** means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of the Federal Controlled Substances Act. This term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1954. Nothing in this Code shall be construed or interpreted to prohibit regulation and registration by the federal government of those persons who cultivate, harvest, or distribute controlled substances in compliance with federal law, nor of hemp possession produced pursuant to a valid Tribal or USDA hemp license as long as the hemp produced complies with Tribal or federal law.
- (9) **Credible threat** means a threat, physical action, or repeated conduct that would cause a reasonable person to be in fear for the person's safety or the safety of his immediate family. The threat need not be directly expressed if the totality of the conduct would cause a reasonable person such fear.
- (10) **Date rape drug** means any drug the purpose or effect of which is to induce an unconscious or sedated state.
- (11) **Deadly weapon** means anything that is designed for lethal use or any other instrument, which, when used as a weapon, is capable of causing death or serious bodily injury. This includes a firearm.
- (12) **Domestic violence protection order** means a court order, injunction, or other order related to domestic violence or family violence, harassment, sexual abuse, or stalking, granted for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person, who is a victim or alleged victim of domestic violence or family violence, dating violence, sexual assault, or stalking.
- (13) **Drug paraphernalia** means any item primarily intended or designed for use in ingesting, inhaling, or otherwise introducing controlled substances into the human body.
- (14) **Firearm** means any weapon which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive.
- (15) **Illegal weapon** means any of the following:
- (a) A firearm silencer, including any device causing or having the effect of silencing, muffling, or lessening the sound of the firing of a firearm;

- (b) A machine gun or any other firearm that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;
 - (c) A shotgun with a barrel length of less than 18 inches or an overall length less than 26 inches;
 - (d) A rifle with a barrel length of less than 16 inches or an overall length less than 26 inches;
 - (e) Any knife having a blade that is released, forcefully projected or revealed from the handle or sheath by means of a spring-loaded device, explosive charge, the force of gravity or centrifugal force or by pressure applied to a button, spring, or other device in its handle;
 - (f) Any blackjack, billy, or other hand-operated striking weapon consisting, at the striking end, of an encased piece of lead or other heavy substance and, at the handle end, a strap or springy shaft that increases the force of impact;
 - (g) Any device designed for projecting gas-filled projectiles that release their contents after having been projected from the device and includes projectiles designed for use in such a device;
 - (h) Metallic knuckles;
 - (i) Any firearm that lacks a serial number or contains an altered or obliterated serial number.
- (16) **Mental culpability** means intentionally, or with intent, or knowingly, or willfully, or recklessly, or with criminal negligence as defined as follows:
- (a) **Intentionally or with intent.** All offenses defined in this Code in which the mental culpability requirement is expressed as “intentionally” or “with intent” are declared to be specific intent offenses. A person acts “intentionally” or “with intent” when his conscious objective is to cause the specific result proscribed by the Code provision defining the offense, whether or not the result actually occurs.
 - (b) **Knowingly or willfully.** All offenses defined in this Code in which the mental culpability requirement is expressed as “knowingly” or “willfully” are declared to be general intent crimes. A person acts “knowingly” or “willfully”:

- (i) With respect to conduct or to a circumstance described by the Code defining an offense when he is aware that his conduct is of such nature or that such circumstance exists.
 - (ii) With respect to a result of his conduct, when he is aware that his conduct is practically certain to cause the result.
- (c) **Recklessly.** A person acts recklessly when he consciously disregards a substantial and unjustifiable risk that a result will occur or that a circumstance exists.
 - (d) **Criminal negligence.** A person acts with criminal negligence when, through a gross deviation from the standard of care that a reasonable person would exercise, he fails to perceive a substantial and unjustifiable risk that a result will occur or that a circumstance exists.
- (17) **Occupied structure** means a building, boat, trailer, airplane, vehicle, structure, or place adapted for overnight accommodation of persons or animals or for carrying on business therein, whether or not the person is present.
 - (18) **Omission** means a failure to perform an act as to which a duty of performance is imposed by law.
 - (19) **Open container** means a bottle, can, or receptacle that contains any amount of alcoholic beverage and that is open or has a broken seal or the contents of which are partially removed.
 - (20) **Peace officer** means any commissioned member of any law enforcement department or division of the Southern Ute Indian Tribe or any other jurisdiction.
 - (21) **Photograph** means a motion picture, videotape, live feed, print, negative, slide, or other mechanically, electronically, or chemically produced or reproduced visual material.
 - (22) **Premises** means tribal land, real property, buildings, and other improvements thereon, and the stream banks and beds of any non-navigable fresh-water streams flowing through such real property that one has authority to occupy, control, or use. This may include the authority to use land through a grant of assignment, homesite lease, or other agreement.
 - (23) **Protection order** means any order issued by the Tribal Court for the protection of persons from credible threats to their physical safety under

the Tribal Code, or issued by another court and entitled to full faith and credit or comity under tribal and federal law.

- (24) **Public place** means an area or place to which the public has access by permit or otherwise and includes, but is not limited, to highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of public and private buildings and facilities.
- (25) **Repeatedly** means on more than one occasion.
- (26) **Serious bodily injury** means bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or a break, fracture of a bone, or burn of the second or third degree.
- (27) **Sexual contact** means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- (28) **Sexual intrusion** means any intrusion, however slight, by any object or any part of a person's body, except the mouth, tongue, or penis, into the genital or anal opening of another person's body if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification, or abuse.
- (29) **Sexual penetration** means sexual intercourse, cunnilingus, fellatio, anilingus, or anal intercourse. Emission need not be proved as an element of any sexual penetration. Any penetration, however slight, is sufficient to complete the crime.
- (30) **Tribe** means the Southern Ute Indian Tribe.
- (31) **Tribal property** means real property, buildings, and other improvements thereon that the Tribe owns or is held in trust for the Tribe's use. This may include land that one has authority to use through a grant of assignment, homesite lease, or other agreement.
- (32) **Voluntary act** means an act performed consciously as a result of effort or determination. It includes possessing property if the person knew of his physical possession or control long enough to terminate it.

ARTICLE 2. OFFENSES AGAINST PROPERTY

5-2-101. Theft.

- (1) It is unlawful to knowingly obtain or exercise control over anything of value of another by threat or deception or without authorization and:
 - (a) Intend to deprive the other person of the use or benefit of the thing of value;
 - (b) Knowingly use, conceal, or abandon the thing of value in such manner as to deprive the other person of its use or benefit;
 - (c) Use, conceal, or abandon the thing of value intending that such use, concealment, or abandonment will deprive the other person of its use or benefit;
 - (d) Demand anything of value to which one is not legally entitled as a condition of restoring the thing of value to the other person;
 - (e) Knowingly retain the thing of value more than 72 hours after the agreed-upon time of return in any lease or hire agreement; or
 - (f) Intentionally fail to reveal the whereabouts of or to return property to the true owner or representative or to the person from whom it was received within 72 hours after the time agreed to return it.
- (2) It is unlawful to receive, loan money by pawn or pledge, or dispose of anything of value or belonging to another that is known or believed to have been stolen, and:
 - (a) Intend to deprive the other person of the use or benefit of the thing of value;
 - (b) Knowingly use, conceal, or abandon the thing of value in such manner as to deprive the other person of its use or benefit;
 - (c) Use, conceal, or abandon the thing of value intending that such use, concealment, or abandonment will deprive the other person of its use or benefit;
 - (d) Demand anything of value to which one is not legally entitled as a condition of restoring the thing of value to the other person;
 - (e) Knowingly retain the thing of value more than 72 hours after the agreed-upon time of return in any lease or hire agreement; or

(f) Intentionally fail to reveal the whereabouts of or to return property to the true owner or representative or to the person from whom it was received within 72 hours after the time agreed to return it.

(3) Any person who violates this Section commits a Class 2 criminal offense.

5-2-102. Theft by Receiving Stolen Property.

(1) It is unlawful to knowingly obtain control over any stolen thing of value, knowing the thing of value to have been stolen by another with the intent to deprive the original owner of its use or benefit.

(2) Any person who violates this Section commits a Class 3 criminal offense.

5-2-103. Robbery.

(1) It is unlawful to knowingly take anything of value from a person or presence of another by using force, threat, or intimidation.

(2) Any person who violates this Section commits a Class 2 criminal offense.

5-2-104. Aggravated Robbery.

(1) It is unlawful during a robbery or immediately fleeing thereafter:

(a) To be armed with a firearm or to use force, threat, or intimidation with a deadly weapon knowingly putting any person in reasonable fear of death or bodily injury;

(b) To have another person present, aiding or abetting the perpetration of the robbery, armed with a firearm; or

(c) To possess any instrument used or fashioned in a manner to lead any person who is present reasonably to believe it to be a deadly weapon or represent verbally, or otherwise, that he is armed.

(2) Any person who violates this Section commits a Class 1 criminal offense.

5-2-105. Burglary.

(1) **First degree burglary.**

(a) It is unlawful to knowingly enter or remain unlawfully after a lawful or unlawful entry, in a building or occupied structure with the intent to commit an offense other than trespass, against another person or property, and if during entry or while in the building or

occupied structure or in immediate flight therefrom, the person or another participant in the crime assaults or menaces any person, the person or another participant is armed with explosives, or the person or another participant uses a deadly weapon or possesses and threatens the use of a deadly weapon.

- (b) Any person who violates this Section commits a Class 1 criminal offense.

(2) Second degree burglary.

- (a) It is unlawful to knowingly break an entrance into, enter unlawfully, or remain unlawfully after a lawful or unlawful entry in a building or occupied structure with intent to commit a crime against another person or property.

- (b) Any person who violates this Section commits a Class 2 criminal offense.

(3) Third degree burglary.

- (a) It is unlawful, if with intent to commit a crime to enter or break into any vault, safe, cash register, coin vending machine, product dispenser, money depository, safety deposit box, coin telephone, coin box, or any other apparatus or equipment.

- (b) Any person who violates this Section commits a Class 3 criminal offense.

5-2-106. Shoplifting.

- (1) It is unlawful to take the goods of another while in a store in which merchandise is sold by:

- (a) Willfully taking possession of any merchandise with the intent to keep it without paying for it;

- (b) Willfully concealing any merchandise with the intent to keep it without paying for it;

- (c) Willfully altering any label, price, tag or marking any merchandise with the intent to deprive the merchant of all or some part of the value of it; or

- (d) Willfully transferring any merchandise from the container in or on which it is displayed to any other container with the intent to deprive the merchant of all or some part of the value of it.
- (e) For this Section, the following definitions apply:
 - (i) **Store** means a place where merchandise is sold or offered to the public for sale at retail.
 - (ii) **Merchandise** means property of any type regardless of the value offered for sale in or about a store.
 - (iii) **Merchant** means any owner of any store, or any agent or employee of the owner.

(2) Any person who violates this Section commits a Class 6 criminal offense.

5-2-107. Illegal Sale or Disposal of Tribal Property.

- (1) It is unlawful to knowingly sell or in any way dispose of trust or Tribal property without proper authorization.
- (2) Any person who violates this Section commits a Class 3 criminal offense.

5-2-108. Trespass.

- (1) It is unlawful to knowingly:
 - (a) Enter or remain in or upon Tribal land or property without legal authorization.
 - (b) Enter or remain on or in another's premises, business, hotel, motel, condominium, or apartment building without consent or without legal authorization.
 - (c) Enter in another's motor vehicle without consent or without legal authorization.
 - (d) Enter or remain on or in another's premises that are enclosed in a manner designed to exclude intruders or that are fenced without consent or without legal authorization.
 - (e) Enter or remain in a dwelling of another or to enter any motor vehicle of another with intent to commit a crime therein.

- (2) For this Section, **dwelling** means a building or occupied structure that is used, intended to be used, or usually used by a person for habitation.
- (3) Any person who violates Subsections (1)(a), (b), and (d) commits a Class 3 criminal offense, Subsection (1)(c) commits a Class 4 criminal offense, and Subsection (1)(e) commits a Class 1 criminal offense.

5-2-109. Arson.

- (1) It is unlawful to:
 - (a) Start a fire or cause an explosion with the intent to destroy or damage another's building or occupied structure; or
 - (b) Destroy or damage any property, whether his own or another's, with the intent to collect insurance for such loss.
- (2) Any person who violates this Section commits a Class 1 criminal offense.

5-2-110. Unlawful Burning.

- (1) It is unlawful to knowingly or recklessly:
 - (a) Start a fire or cause an explosion that endangers human life;
 - (b) Damage property of another by use of fire;
 - (c) Cause a fire, whether recklessly or not, and knowing that it is spreading and will endanger the life or property of another, fail to take reasonable measures to put out or control the fire or fail to give a prompt fire alarm; or
 - (d) Violate a fire ban or restriction that is in effect.
- (2) Any person who violates this Section commits a Class 3 criminal offense.

5-2-111. Criminal Mischief.

- (1) It is unlawful to knowingly damage the real or personal property of another, including the Southern Ute Indian Tribe, and including property owned by the person jointly with another person or property owned by the person in which another person has a possessory or proprietary interest.
- (2) Any person who violates this Section commits a Class 3 criminal offense.

5-2-112. Defacing Property.

- (1) It is unlawful to deface or cause, aid in, or permit the defacing of public or private property without the consent of the owner. This section includes any method of defacement, including but not limited to painting, drawing, writing, or otherwise marring the surface of the property by use of any substance or object.
- (2) Any person who violates this Section commits a Class 5 criminal offense.

5-2-113. Maintaining a Public Nuisance.

- (1) It is unlawful to maintain one's property in such a condition so as to injure or endanger the health, safety, or property of his neighbors.
- (2) Any person who violates this Section commits a Class 5 criminal offense.

ARTICLE 3. FRAUD AND FINANCIAL OFFENSES

5-3-101. Fraud.

- (1) It is unlawful to obtain money, property, or services by willful misrepresentation or deceit.
- (2) It is unlawful to issue a check to pay for services, wages, salary, commissions, labor, rent, money, property, or other thing of value, knowing one has insufficient funds with the drawee, and with the intent to defraud.
- (3) Any person who violates this Section commits a Class 2 criminal offense.

5-3-102. Extortion.

- (1) It is unlawful to knowingly obtain the property of another by threatening to:
 - (a) Inflict bodily injury on anyone;
 - (b) Accuse anyone of a criminal offense;
 - (c) Expose any secret tending to subject any person to hatred, contempt or ridicule, publicly shame or embarrass, or to impair his credit or business reputation;
 - (d) Take or withhold action as an official, or cause an official to take or withhold some action; or

(e) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(2) Any person who violates this Section commits a Class 2 criminal offense.

5-3-103. Embezzlement.

(1) It is unlawful if one has lawful custody of property not his own and knowingly converts the property to his own use.

(2) Any person who violates this Section commits a Class 2 criminal offense.

5-3-104. Forgery.

(1) It is unlawful, with intent to defraud, to falsely sign, make, offer, or alter any writing or electronic document, which is or purports to be, or which is calculated to become or to represent if completed:

(a) Part of an issue of money, stamps, securities, or other valuable instruments issued by a government or government agency;

(b) Part of an issue of stock, bonds, or other instruments representing interests in or claims against a corporate or other organization or its property;

(c) A deed, will, codicil, contract, assignment, commercial instrument, promissory note, check, or other instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status;

(d) A public record or an instrument filed or required by law to be filed or legally fileable in or with a public office or public servant;

(e) A written instrument officially issued or created by a public office, public servant, or government agency;

(f) Part of an issue of tokens, transfers, certificates, or other articles manufactured and designed for use in transportation fees upon public conveyances, or as symbols of value usable in place of money for the purchase of property or services available to the public for compensation;

(g) Part of an issue of lottery tickets or shares designed for use in a lottery;

(h) A document-making implement that may be used or is used to produce a false identification document or in the production of another document-making implement to produce false identification documents; or

(i) Any written academic instrument or document.

(2) Any person who violates this Section commits a Class 2 criminal offense.

5-3-105. Misappropriation of Property of an Estate.

(1) It is unlawful, without proper authority or with intent to deprive an heir's rightful claim, to misappropriate property of an estate, except for burying personal effects with the deceased or burning such personal effects.

(2) Any person who violates this Section commits a Class 3 criminal offense.

5-3-106. Deceptive Business Practices.

(1) It is unlawful, in the course of business, to knowingly:

(a) Use or possess for use a false weight or measure or any other device for falsely determining or recording any quality or quantity of any commodity or service;

(b) Sell, offer to sell or deliver less than the represented quality or quantity of any commodity or service;

(c) Sell or offer to sell adulterated or mislabeled commodities; or

(d) Make a false or misleading statement in any advertisement addressed to the public or a substantial public segment to promote buying or selling property or services.

(2) Any person who violates this Section commits a Class 5 criminal offense.

ARTICLE 4. OFFENSES AGAINST GOVERNMENTAL OPERATIONS

5-4-101. Bribery.

(1) It is unlawful to offer, confer, or agree 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.

(2) Any person who violates this Section commits a Class 2 criminal offense.

5-4-102. Official Oppression.

- (1) It is unlawful, when acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity and knowing that one's conduct is illegal, to:
 - (a) Subject another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or
 - (b) Deny or impede another in the exercise or enjoyment of any right, power, or immunity.
- (2) Any person who violates this Section commits a Class 3 criminal offense.

5-4-103. Official Misconduct.

- (1) It is unlawful while being an elected or appointed official to:
 - (a) With intent to benefit himself or another or harm another, knowingly commit an unauthorized act, which purports to be an act of his office, or knowingly refrain from performing a nondiscretionary duty imposed upon him by law or clearly inherent in the nature of his office;
 - (b) Solicit, accept, or agree to accept any pecuniary benefit upon an understanding that his vote, opinion, judgment, exercise of discretion, or other action as an official will be influenced; or
 - (c) Knowing that official action is contemplated or in reliance on information that he has acquired by virtue of his office or from another official, which information has not been made public:
 - (i) Acquire or divest himself of a valuable interest in any property, transaction or enterprise that results in a personal benefit; or
 - (ii) Speculate or wager on the basis of such action or information; or
 - (iii) Deprive another of the intangible right of honest services; or
 - (iv) Knowingly aid another to do any of the foregoing.
- (2) Any person who violates this Section commits a Class 3 criminal offense.

5-4-104. Perjury.

- (1) It is unlawful to knowingly, in any official proceeding, falsely swear or interpret, or make a sworn statement or affidavit, knowing the same to be untrue, or induce or procure another person to do so.
- (2) Any person who violates this Section commits a Class 3 criminal offense.

5-4-105. False Alarm, False Charge, and False Information.

- (1) It is unlawful to knowingly:
 - (a) Falsely cause an emergency alarm to be transmitted to or within any organization, to any official or volunteer, for dealing with emergencies involving danger to life or property;
 - (b) Give false identifying information, such as name, address, birth date, social security number, or driver's license, social security, Tribal identification or other identifying information, to any law enforcement officer in the lawful performance of his duties;
 - (c) Report to a law enforcement authority an offense or other incident within their concern, knowing or believing that it did not occur; or
 - (d) Furnish a law enforcement authority with information relating to an offense or incident when he knows he has no information relating to such offense or incident.
- (2) Any person who violates this Section commits a Class 4 criminal offense.

5-4-106. Tampering with a Witness or Victim.

- (1) It is unlawful for a person to intentionally attempt, to:
 - (a) Influence a witness or victim to testify or inform falsely during a hearing, official proceeding, or investigation;
 - (b) Induce a witness or victim to unlawfully withhold any evidence from a hearing, official proceeding, or investigation;
 - (c) Induce a witness or victim to avoid legal process summoning him to testify or supply evidence;
 - (d) Induce a witness or victim to not appear at any hearing, official proceeding, or investigation to which he has been legally summoned;

- (e) Inflict such harm or injury to a witness or victim before such testimony or expected testimony; or
 - (f) Solicit, accept, or agree to accept any benefit in consideration of his doing any of the things specified in this Section.
- (2) This Section applies to a witness in any criminal or civil proceeding; a victim of any crime; a person he believes has been or is to be called or who would have been called to testify as a witness in any criminal or civil proceeding; a member of the witness's family; a member of the victim's family; a person in close relationship to the witness or victim; a person residing in the same household with the witness or victim; or any person who has reported a crime or who may be called to testify as a witness or victim of any crime.
 - (3) Any person who violates this Section commits a Class 2 criminal offense.

5-4-107. Retaliation Against a Witness or Victim.

- (1) It is unlawful to make a threat against or harass, harm, or injure a person or property as retaliation or retribution against a witness in any criminal or civil proceeding; against an individual whom the person believes has been or would have been called to testify in a criminal or civil proceeding; or a victim of any crime.
- (2) For purposes of this Section, the threat, harassment, or injury may be made against or inflicted directly upon the witness or victim, or any member of the family or household of such witness or victim or any of their property.
- (3) Any person who violates this Section commits a Class 1 criminal offense.

5-4-108. Tampering with Evidence.

- (1) It is unlawful:
 - (a) To alter, destroy, conceal, or remove evidence with the intent to impair its veracity or availability in a hearing, official proceeding, or investigation; or
 - (b) To knowingly make, present, or offer any false or altered physical evidence with the intent that it be introduced in the pending or prospective hearing, official proceeding, or investigation.
- (2) Any person who violates this Section commits a Class 3 criminal offense.

5-4-109. Impersonating a Peace Officer or Public Official.

- (1) It is unlawful to impersonate or falsely claim to be a peace officer or public official and act in that capacity.
- (2) Any person who violates this Section commits a Class 4 criminal offense.

5-4-110. Retaliation Against a Judge or Juror.

- (1) It is unlawful to make a threat against or harass, harm, or injure a person or property as retaliation or retribution against a judge or juror. For purposes of this Section, the threat, harassment, or injury may be made against or inflicted directly upon the judge or juror, or any member of the family or household of the judge or juror or any of their property.
- (2) Any person who violates this Section commits a Class 2 criminal offense.

5-4-111. Obstructing Governmental Operations.

- (1) It is unlawful to intentionally obstruct, impair, or hinder the performance of a lawful governmental function by a public servant by using or threatening to use violence, force, or physical interference or obstacle.
- (2) The following are affirmative defenses:
 - (a) The public servant acted unlawfully; or
 - (b) The obstruction, impairment, or hindrance was to make an arrest.
- (3) Any person who violates this Section commits a Class 4 criminal offense.

5-4-112. Resisting Arrest.

- (1) It is unlawful to knowingly prevent or attempt to prevent a peace officer, acting under the color of his official authority, from effecting an arrest by:
 - (a) Using or threatening to use physical force or violence against the peace officer or another; or
 - (b) Using any other means that creates a substantial risk of causing bodily injury to the peace officer or another.
 - (c) It is no defense to a prosecution under this Section that the peace officer was attempting to make an arrest that in fact was unlawful, if he was acting under color of his official authority and, in

attempting to make the arrest, he was not resorting to unreasonable or excessive force giving rise to the right of self-defense.

(d) The following definitions apply to this Section:

(i) Acting under color of his official authority means when a peace officer, in the regular course of assigned duties, he is called upon to make, and does make, a judgment in good faith based upon surrounding facts and circumstances that an arrest should be made by him.

(ii) Peace officer means a peace officer in uniform or, if out of uniform, one who has identified himself by exhibiting his credentials as such peace officer to the person whose arrest is attempted.

(2) Any person who violates this Section commits a Class 3 criminal offense.

5-4-113. Fleeing or Evading.

(1) It is unlawful for a pedestrian to intentionally flee or evade a peace officer when he knowingly or wantonly disobeys a direction to stop, given by a person recognized to be a peace officer who has an articulable reasonable suspicion that a crime has been committed by the person fleeing, and in fleeing or evading the person is the cause of, or creates a substantial risk of, physical injury to any person.

(2) Any person who violates this Section commits a class 2 criminal offense.

5-4-114. Obstructing Justice.

(1) It is unlawful if, with the intent to hinder the apprehension, prosecution, conviction, or punishment of another for the commission of an offense, to:

(a) Harbor or conceal a suspect or offender;

(b) Provide or aid a suspect or offender by providing money, a weapon, transportation, disguise, or other means of avoiding apprehension of or effecting escape;

(c) Conceal or destroy evidence of the offense or tamper with a witness, informant, document, or other source of information, regardless of its admissibility in evidence;

- (d) Warn the suspect or offender of impending discovery or apprehension, except if such warning is given to encourage the suspect or offender to comply with the law;
- (e) Give false information to a law enforcement officer for the purpose of preventing the apprehension of the suspect or offender; or
- (f) Obstruct by force, threat, bribery, or deception anyone from performing an act that might aid in the discovery, apprehension, prosecution, or conviction of the suspect or offender.

(2) Any person who violates this Section commits a Class 2 criminal offense.

5-4-115. Escape.

- (1) It is unlawful to escape from custody or confinement while in custody or confinement and held for or charged with, or convicted of a crime.
- (2) Any person who violates this Section commits a Class 3 criminal offense.

5-4-116. Introduction or Possession of Contraband.

- (1) It is unlawful to knowingly introduce, attempt to introduce, or possess in the Southern Ute Detention Center:
 - (a) any contraband, malt, vinous or spirituous liquor, fermented malt beverage;
 - (b) drug paraphernalia;
 - (c) a tool or instrument that could be used to cut fence or wire, dig, pry, or file;
 - (d) any counterfeit or forged identification card;
 - (e) any mask, wig or disguise that could hinder identification of a person;
 - (f) any combustible material;
 - (g) obscene material; or
 - (h) Any article or thing that poses or may pose a threat to the security of the detention facility as determined by the administrative head of the detention facility if reasonable notice is given that such article or thing is contraband.

- (2) Any person who violates this Section commits a Class 5 criminal offense.

5-4-117. Disobedience to Court Orders.

- (1) It is unlawful to knowingly disobey any order, subpoena, or jury summons issued by the Tribal Court. This Section does not apply to violations of protection orders or exclusion orders that are covered elsewhere in the Code.
- (2) Any person who violates this Section commits a Class 5 criminal offense.

5-4-118. Violation of a Protection Order.

- (1) It is unlawful to violate any provision of a protection order after being personally served with a protection order or having otherwise acquired actual knowledge of the contents of any such order.
- (2) Any person who violates this Section commits a Class 3 criminal offense.

5-4-119. Violation of an Exclusion Order.

- (1) It is unlawful to knowingly violate an exclusion order duly issued by the Tribe.
- (2) Any person who violates this Section commits a Class 3 criminal offense.

5-4-120. Violation of Bond Conditions.

- (1) It is unlawful for any person who is released on bond to knowingly violate the bond conditions.
- (2) Any person who violates this Section commits a Class 5 criminal offense.

ARTICLE 5. SEX OFFENSES

5-5-101. Sexual Assault.

- (1) It is unlawful for a person to knowingly inflict sexual intrusion or sexual penetration on another person if:
 - (a) The offender causes submission of the victim by means reasonably calculated to cause submission against the victim's will;
 - (b) The victim is incapable of consenting due to intoxication or impairment from drugs or alcohol, or similar condition preventing informed consent;

- (c) The offender engages in sexual intrusion or penetration with a victim after having substantially impaired the victim's power to consent, resist, or reasonably appraise self-conduct by administering or employing without the victim's consent or knowledge any drugs, intoxicants, or other means to prevent resistance;
 - (d) The victim is physically helpless and the offender knows that the victim is physically helpless and the victim has not consented;
 - (e) The offender uses deceit to obtain the victim's consent;
 - (f) At the time of the commission of the act, the victim is less than 15 years of age and the offender is at least 4 years older than the victim and is not the spouse of the victim;
 - (g) At the time of the commission of the act, the victim is at least 15 years of age, but less than 17 years of age and the offender is at least 10 years older than the victim and is not the spouse of the victim;
 - (h) The victim is in custody of law or detained in a hospital or other institution and the offender has supervisory or disciplinary authority over the victim and uses this position of authority to coerce the victim to submit, unless the act is incident to a lawful search; or
 - (i) The offender, while purporting to offer a medical service, engages in treatment or examination of a victim for other than a bona fide medical purpose or in a manner substantially inconsistent with reasonable medical practices.
- (2) Any person who violates this Section commits a Class 1 criminal offense.

5-5-102. Unlawful Sexual Contact.

- (1) It is unlawful for a person to knowingly have sexual contact with another person when:
 - (a) The offender knows that the victim does not consent;
 - (b) The offender knows that the victim is incapable of appraising the nature of the victim's conduct;
 - (c) The victim is physically helpless and the offender knows that the victim is physically helpless and the victim has not consented;

- (d) The offender has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission;
- (e) The victim is in custody or in a health, treatment facility, or other institution and the offender has supervisory or disciplinary authority over the victim and uses this position of authority, unless incident to a lawful search, to coerce the victim to submit;
- (f) The offender engages in treatment or examination of a victim without a bona fide medical purpose or in a manner substantially inconsistent with reasonable medical practices; or
- (g) With or without sexual contact, the offender induces or coerces a child by any of the means set forth in Section 5-4-101 to expose intimate parts or to engage in any sexual contact, intrusion, or penetration, for the purpose of the offender's sexual gratification.

(2) Any person who violates this Section commits a Class 1 criminal offense.

5-5-103. Incest.

(1) It is unlawful for a person to knowingly engage in sexual contact or sexual penetration with an ancestor, descendant, brother, or sister of the whole or half blood, stepchild, aunt, uncle, niece, nephew, first cousin, or a child whom one has adopted, except for a person who is legally married to the adopted child.

(2) Any person who violates this Section commits a Class 4 criminal offense.

5-5-104. Indecent Exposure.

(1) It is unlawful to knowingly expose one's genitals to another under circumstances in which such conduct is likely to cause affront or alarm to the other person with the intent to arouse or to satisfy the sexual desire of any person.

(2) Any person who violates this Section commits a Class 5 criminal offense.

5-5-105. Invasion of Privacy for Sexual Gratification.

(1) It is unlawful to knowingly observe or take a photograph or video of another person's intimate parts without that person's consent, for the

observer's own sexual gratification, in a situation where the person observed, photographed, or recorded has a reasonable expectation of privacy.

- (2) For purposes of this section, intimate parts mean the external genitalia, perineum, anus, buttocks, pubes, or breast of any person.
- (3) Any person who violates this Section commits a Class 5 criminal offense.

5-5-106. Sexual Exploitation of a Child.

- (1) It is unlawful to cause, induce, entice, or permit a child to engage in, or be used for, any explicit sexual conduct for the making of any sexually exploitative material or to engage in explicit sexual conduct.
- (2) Any person who violates this Section commits a Class 1 criminal offense.

5-5-107. Sexual Exploitation of a Child by a Parent, Legal Guardian, or Person Having Custody or Control of a Minor.

- (1) It is unlawful for a parent, legal guardian or a person having custody or control of a minor to knowingly permit that minor to engage in sexually explicit conduct to produce any visual depiction of such conduct.
- (2) Any person who violates this Section commits a Class 1 criminal offense.

5-5-108. Trafficking of Child Pornography.

- (1) It is unlawful to knowingly mail, transport, receive, distribute, reproduce, sell, or possess any sexually exploitative materials depicting children with the intent to sell, advertise, promote, or solicit by any means, including by electronic means, child pornography.
- (2) Any person who violates this Section commits a Class 1 criminal offense.

5-5-109. Possession of Child Pornography.

- (1) It is unlawful to intentionally receive or knowingly possess any sexually exploitative materials depicting children.
- (2) A juvenile's conduct will not be prosecuted under this Section if:
 - (a) A juvenile who knowingly possesses a sexually explicit image of another who is at least 14 years of age or less than 4 years younger than the juvenile, took reasonable steps to delete the image within 72 hours after initially viewing it, or reported the initial viewing of

the image to law enforcement or school official within 72 hours after initially viewing it;

(b) A juvenile knowingly sends a sexually explicit image of oneself to another person who is at least 14 years of age or less than 4 years younger than the juvenile, and the image depicts only the sender and no other person and the sender reasonably believed that the recipient had solicited or otherwise agreed to see the image; or

(c) A juvenile knowingly possesses a sexually explicit image of another person who is at least 14 years of age or less than 4 years younger than the juvenile, and the image depicts only the sender and no other person and the juvenile reasonably believed that the depicted person had sent the image or agree to send it.

(3) This Section does not apply to law enforcement personnel, defense counsel personnel, or court personnel in the performance of their official duties, nor does it apply to physicians, psychologists, therapists, or social workers, so long as such persons are licensed in any state and the persons possess such materials in the course of a bona fide treatment or evaluation program at the treatment or evaluation site.

(4) Any person who violates this Section commits a Class 1 criminal offense.

5-5-110. Human Trafficking for Sexual Gratification.

(1) It is unlawful to knowingly sell, recruit, harbor, transport, transfer, isolate, entice, provide, receive, or obtain by any means another person to coerce a person to engage in commercial sexual activity.

(2) Any person who violates this Section commits a Class 1 criminal offense.

5-5-111. Prostitution.

(1) It is unlawful to perform, offer, or agree to perform any act of sexual contact with any person in exchange for money or other thing of value.

(2) Any person who violates this Section commits a Class 5 criminal offense.

5-5-112. Soliciting for Prostitution.

(1) It is unlawful to solicit another for the purpose of prostitution or arrange, or offer to arrange, a meeting of persons for the purpose of prostitution, or direct another to a place knowing such direction is for the purpose of

prostitution.

- (2) Any person who violates this Section commits a Class 5 criminal offense.

5-5-113. Keeping a Place of Prostitution.

- (1) It is unlawful to exercise control over the use of any place, which offers seclusion or shelter, for the practice of prostitution and knowingly grant or permit the use of such place or permit 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.
- (2) Any person who violates this Section commits a Class 5 criminal offense.

ARTICLE 6. OFFENSES AGAINST THE PERSON

5-6-101. Assault and Battery.

- (1) It is unlawful to:
 - (a) Intentionally, knowingly, or recklessly cause bodily injury to another; or
 - (b) Negligently cause bodily injury to another with a deadly weapon.
- (2) Any person who violates this Section commits a Class 2 criminal offense.

5-6-102. Aggravated Assault and Battery.

- (1) It is unlawful to:
 - (a) Intentionally, knowingly, or recklessly cause serious bodily injury to another under circumstances demonstrating extreme indifference to the value of human life; or
 - (b) Intentionally or knowingly cause bodily injury to another with a deadly weapon.
- (2) Any person who violates this Section commits a Class 1 criminal offense.

5-6-103. Assault and Battery on Officer or Other Personnel.

- (1) It is unlawful to intentionally, knowingly, or recklessly assault or cause bodily injury, or threaten to cause bodily injury to a peace officer or detention officer.

- (2) It is unlawful, while confined or in custody, to intentionally, knowingly, or recklessly cause bodily injury to a person employed by or service providers at a detention facility engaged in the performance of their official duties, including firefighter, emergency medical service provider, a judge, an officer of the court, and the person committing the offense knows or reasonably should know that the victim is such an employee or service provider.
- (3) It is unlawful to intentionally harass, annoy, threaten, intimidate, or alarm another person whom he knows, or reasonably should know, to be a peace officer or other personnel in Subsections (2) and (3) while engaged in the performance of his official duties by causing the affected person to come into contact with blood, seminal fluid, urine, feces, saliva, mucus, vomit, or toxic, caustic, or hazardous material by any means, including throwing, tossing, or expelling the fluid or material.
- (4) Any person who violates this Section commits a Class 1 criminal offense.

5-6-104. Menacing.

- (1) It is unlawful to knowingly place or attempt to place another person in fear of imminent bodily injury.
- (2) Any person who violates this Section commits a Class 3 criminal offense.

5-6-105. Aggravated Menacing.

- (1) It is unlawful to knowingly use a deadly weapon to place or attempt to place another person in fear of imminent serious bodily injury.
- (2) Any person who violates this Section commits a Class 2 criminal offense.

5-6-106. Homicide.

- (1) It is unlawful to intentionally, knowingly, recklessly, or by criminal negligence cause another person's death.
- (2) Any person who violates this Section commits a Class 1 criminal offense.

5-6-107. Kidnapping.

- (1) It is unlawful to intentionally or knowingly take any person from one place to another without the person's consent and without lawful justification.

- (2) Any person who violates this Section commits a Class 2 criminal offense.

5-6-108. Aggravated Kidnapping.

- (1) It is unlawful if, in committing a kidnapping, to use a deadly weapon.
- (2) Any person who violates this Section commits a criminal offense enhanced one class than the kidnapping offense (e.g., class 2 to class 1).

5-6-109. False Imprisonment.

- (1) It is unlawful to intentionally or knowingly restrain another so as to interfere with such person's liberty without the person's consent or without legal authority.
- (2) Any person who violates this Section commits a Class 3 criminal offense.

5-6-110. Violation of Custody.

- (1) It is unlawful to:
 - (a) Knowingly take or entice any child under the age of 18 years without the privilege or legal authority to do so from the custody or care of the child's parents, guardian, or other lawful custodian or person with parental responsibilities; or
 - (b) Violate any lawful Tribal or state court order, granting custody or allocating parental rights and responsibilities for a child under the age of 18 years, with the intent to deprive the lawful custodian of the custody or care of a child.
 - (c) It shall be an affirmative defense either that the offender reasonably believed that his conduct was necessary to protect the child from danger, or that the child, being at the time more than 14 years old, was taken away at his own instigation without enticement and without the intent to commit a criminal offense with or against the child.
- (2) Any person who violates this Section commits a Class 2 criminal offense.

5-6-111. Harassment.

- (1) It is unlawful with intent to harass, intimidate, or alarm another person, to:
 - (a) Strike, shove, kick, touch, or subject a person to physical contact;

- (b) Directly or indirectly initiate communication with a person by telephone, computer, e-mail, text message, or other electronic or data means, in a manner intended to threaten bodily injury or property damage; or
 - (c) Repeatedly insult, taunt, challenge, or make communications in offensively coarse language to another in a manner likely to provoke a violent or disorderly response.
- (2) Any act prohibited by this Section may be deemed to have occurred or to have been committed at the place at which the telephone call, e-mail, or other electronic communication was either made or received.
 - (3) Any person who violates this Section commits a Class 3 criminal offense.

5-6-112. Stalking.

- (1) It is unlawful for a person to knowingly and directly, or indirectly through another person:
 - (a) Make a credible threat to the victim and, in connection with such threat, repeatedly follow the victim or a member of victim's immediate family;
 - (b) Make a credible threat to the victim and, in connection with such threat, repeatedly make any form of communication with the victim or a member of the victim's immediate family, whether or not a conversation ensues; or
 - (c) Repeatedly follow, approach, contact, place under surveillance, or make any form of communication with the victim, a member of the victim's immediate family, or someone with whom the victim has or has had a continuing relationship in a manner that would cause a reasonable person to suffer serious emotional distress and does cause such person to suffer serious emotional distress. For purposes of this Subsection, a victim need not show having received professional treatment or counseling to show having suffered serious emotional distress.
- (2) Any person who violates this Section commits a Class 3 or 4 criminal offense.
- (3) The following will enhance the class of offense one level if any of the following apply:

- (a) The defendant has previously been convicted within the last 10 years of harassment, stalking, or similar statute of any jurisdiction involving a domestic violence offense;
 - (b) The stalking violated any protective order protecting the victim stalked;
 - (c) The defendant was armed with a deadly weapon while stalking the victim; or
 - (d) The victim is or was a law enforcement officer, judge, juror, attorney, victim advocate or children’s advocate, Tribal Council member, corrections officer, probation officer or staff and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim’s performance of official duties.
- (4) Acts may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail, or other electronic communication was either made or received.
 - (5) For this Section, “immediate family” means a person related as a parent, grandparent, child, grandchild, brother, sister, or by marriage as a parent-in-law, stepparent, stepchild, step-grandchild, brother-in-law, or sister-in-law. Immediate family also includes family members through adoption, foster parents, or guardians.

5-6-113. Disorderly Conduct.

- (1) It is unlawful to knowingly or recklessly engage in fighting, threatening, or violent behavior in a public place.
- (2) It is unlawful to intentionally, knowingly, or recklessly disturb, disrupt, or interfere with any public or private or religious assembly by engaging in violent disorderly conduct.
- (3) Any person who violates this Section commits a Class 5 criminal offense.

5-6-114. Reckless Endangerment.

- (1) It is unlawful to recklessly engage in conduct that creates a substantial risk of serious bodily injury to another person.
- (2) Any person who violates this Section commits a Class 4 criminal offense.

ARTICLE 7. DRUG AND ALCOHOL OFFENSES

5-7-101. Unlawful Possession or Use of a Controlled Substance.

- (1) It is unlawful to possess or use a controlled substance if one knowingly possesses, manufactures, holds, controls, carries, or otherwise has in his custody or uses any quantity of a controlled substance.
- (2) The following exemptions apply to unlawful possession of a controlled substance:
 - (a) Possession or transportation of peyote for bona fide traditional ceremonial purposes in connection with the practice of a traditional Native American religion.
 - (b) Possession by peace officers or employees of federal, state, local, or Tribal governments acting within the scope of their authorities.
 - (c) Possession by a practitioner authorized to prescribe any controlled substance that is manufactured, held, controlled, carried or otherwise in his custody in the course of his professional practice and under a DEA license or number issued in accordance with federal law.
 - (d) Possession by a person with a valid prescription in accordance with the federal Controlled Substances Act. A person to whom or for whose use any controlled substance has been prescribed or dispensed by a practitioner in accordance with the federal Controlled Substances Act, may lawfully possess it, but only in the container in which it was delivered to him unless he is able to show that he is the legal owner or a person acting at the direction of the legal owner of the controlled substance.
- (3) The burden of proof of any such exemption or exception is upon the person claiming it.
- (4) Any person who violates this Section commits a Class 3 criminal offense.

5-7-102. Unlawful Possession or Use of Marijuana.

- (1) It is unlawful to possess or consume marijuana, so long as it remains illegal under federal law.
- (2) Any person who violates this Section is subject to penalties, dependent on amount, in accordance with the criminal penalty schedule.

5-7-103. Unlawful Sale or Distribution of a Controlled Substance.

- (1) It is unlawful to possess any controlled substance with the intent to sell, trade, give away, or distribute such substance.
- (2) This offense does not apply to a practitioner authorized to prescribe any controlled substance that is sold or distributed by him in the course of his professional practice under a professional license issued in accordance with federal, state, or Tribal law. The burden of proof of this exemption or exception is upon the person claiming it.
- (3) Any person who violates this Section commits a Class 2 criminal offense.

5-7-104. Unlawful Possession, Distribution, or Sale of Drug Paraphernalia.

- (1) It is unlawful to knowingly possess, distribute, or sell drug paraphernalia.
- (2) This offense does not apply to any person authorized by state, federal, or Tribal law to manufacture, possess, or distribute such items; or any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with tobacco products, including any pipe, paper, or accessory. The burden of proof of any such exemption or exception is upon the person claiming it.
- (3) Any person who violates this Section commits a Class 4 criminal offense.

5-7-105. Abuse of Toxic Vapors.

- (1) It is unlawful to knowingly cause intoxication, inebriation, excitement, stupefaction, or the dulling of one's brain or nervous system by:
 - (a) Inhaling the fumes of any toxic vapors;
 - (b) Possessing, purchasing or attempting to possess or purchase any toxic vapors with the intent to violate this Section; or
 - (c) Knowingly selling or offering to sell toxic vapors when the seller or offeror knows the buyer or recipient intends to misuse them in violation of this Section.
- (2) For the purposes of this Section, the term "toxic vapors" means the substances or products containing such substances as defined by Colorado law.

- (3) In a prosecution for a violation of this Section, evidence that a container lists one or more of the substances described in Subsection (2) of this Section as one of its ingredients is prima facie evidence that the substance in such container contains toxic vapors and emits those fumes.
- (4) Any person who violates this Section commits a Class 3 criminal offense.

5-7-106. Unlawful Possession, Sale, or Distribution of a Date Rape Drug.

- (1) It is unlawful to knowingly possess, sell, or distribute a date rape drug while knowing or having reasonable cause to believe that the drug may be used to commit criminal sexual conduct.
- (2) Any person who violates this Section commits a Class 3 criminal offense.

5-7-107. Obtaining a Controlled Substance by Fraud or Deceit.

- (1) It is unlawful to obtain a controlled substance or procure the administration of a controlled substance by fraud, deceit, misrepresentation, or subterfuge; or by the forgery or alteration of an order; or by the concealment of a material fact; or by the use of a false name or the giving of a false address.
- (2) Information communicated to a practitioner in an effort to procure a controlled substance other than for legitimate treatment purposes or unlawfully to procure the administration of any such controlled substance is deemed not to be a privileged communication.
- (3) It is unlawful to willfully make a false statement in any order, report, or record required by this Article.
- (4) It is unlawful, when obtaining a controlled substance, to falsely assume the title of, or falsely claim to be, a manufacturer, distributor, practitioner, or other person authorized by law to obtain a controlled substance.
- (5) It is unlawful to make any false or forged order.
- (6) It is unlawful to affix any false or forged label to a package or receptacle containing a controlled substance.
- (7) Any person who violates this Section commits a Class 3 criminal offense.

5-7-108. Illegal Possession or Consumption of an Alcoholic Beverage or Marijuana or Possession of Drug Paraphernalia by an Underage Person.

- (1) It is unlawful to possess or have consumed or have in one's system an alcoholic beverage or marijuana, or possess drug paraphernalia, while under the age of 18.
- (2) It is unlawful to possess or consume an alcoholic beverage or marijuana between the ages of 18 and 21.
- (3) Any person who violates this Section is subject only to a fine, community service, and sentencing options that promote rehabilitation.
- (4) Definitions. For purposes of this Section the following definitions apply:
 - (a) **Possess an alcoholic beverage or marijuana** means that a person has or holds any amount of an alcoholic beverage or marijuana anywhere on his person, or that a person owns or has custody of an alcoholic beverage or marijuana, or has an alcoholic beverage or marijuana within his immediate possession and control on the Reservation.
 - (b) **Consume an alcoholic beverage or marijuana** means that a person drinks or has drunk any amount of an alcoholic beverage or smoked or ingested any amount of marijuana.
- (5) Any person who violates this Section commits a Class 6 criminal offense.

5-7-109. Unlawful Possession of an Open Container.

- (1) It is unlawful while in any public place to possess or have in one's control an open container that holds any amount of an alcoholic beverage, unless in a facility that is permitted or licensed.
- (2) Any person who violates this Section commits a Class 6 criminal offense.

ARTICLE 8. OFFENSES AGAINST CHILDREN

5-8-101. Endangering the Welfare of a Child.

- (1) It is unlawful for a parent, guardian, custodian, or other person supervising a child to:
- (2) Knowingly violate a duty of care;
- (3) Intentionally leave the child without appropriate care; or
- (4) Neglectfully care for the child in any manner that threatens serious harm to the physical, emotional, or mental well-being of the child.

- (5) Any person who violates this Section commits a Class 4 criminal offense.

5-8-102. Contributing to the Delinquency of a Minor.

- (1) It is unlawful to willfully, by action or omission, permit a child to violate local state, federal, or Tribal law, including status offenses.
- (2) It is unlawful for an adult to knowingly invite, solicit, recruit, assist, support, cause, encourage, enable, to induce, advise, incite, facilitate, permit, or allow a minor to:
 - (a) Be truant from school;
 - (b) Possess or consume alcohol, or possess or consume a controlled substance, without a valid prescription;
 - (c) Run away from the place of abode of his or her parent, guardian, or other custodian;
 - (d) Violate a Court order; or
 - (e) Violate any criminal law.
- (3) “Minor” means any person defined in the Juvenile Delinquency Code.
- (4) A person commits the offense in Subsection 2(a) by repeatedly neglecting or refusing, without good cause, to send any child of school age under the person’s care to school.
- (5) Any person who violates this Section commits a Class 4 offense.
- (6) For a second or subsequent conviction of Section 2(a), the offense is classified as a Class 3 offense.

5-8-103. Child Abuse.

- (1) It is unlawful to:
 - (a) Intentionally, knowingly, or recklessly cause physical, emotional, or mental injury to a child; or
 - (b) Intentionally, knowingly, recklessly, or through criminal negligence, cause physical, emotional, or mental injury to a child by failing to take action to provide the child food, clothing, shelter, or medical or dental treatment that a reasonably 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, will 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 to consider the child to be injured or endangered.

(2) Any person who violates this Section commits a Class 2 criminal offense.

5-8-104. Aggravated Child Abuse.

(1) It is unlawful to intentionally, knowingly, or recklessly engage in a continued pattern of conduct, including but not limited to, malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries, that ultimately results in the death of or serious bodily injury to a child.

(2) Any person who violates this Section commits a Class 1 criminal offense.

ARTICLE 9. OFFENSES TO AT-RISK ADULTS AND ELDERS

5-9-101. Policy. As custodians of the Tribe's history, culture, and traditions, elders are held in high esteem and vital to the Tribe. Tribal Council also declares it the Tribe's cultural policy to protect at-risk adults who cannot protect themselves because of mental or physical limitations. The Tribe seeks to protect at-risk adults and elders from abuse, financial exploitation and neglect, including self-neglect. Because at-risk adults and elders are far more susceptible than the general population to the adverse long-term effects of crimes committed against them, including abuse, exploitation, and neglect, Tribal Council therefore finds that penalties for specified crimes committed against them should be more severe.

5-9-102. Definitions. The following definitions apply to this Article.

(1) **At-risk adult.** A person 18 years of age or older who is susceptible to abuse, exploitation, or neglect because of a physical or mental disability, including but not limited to illness, age, or chronic substance abuse.

(2) **Caretaker.** A person who:

(a) Is legally required to provide care or services to an elder or at-risk adult;

- (b) Assumes responsibility to provide care or services to an elder or at-risk adult; or
 - (c) Is paid to provide care or services to an elder or at-risk adult.
- (3) **Guardian.** An adult appointed by a parent or a court who must provide for the custody and care of an incompetent elder or at-risk adult, including education and medical care, if needed or appropriate.

5-9-103. At-Risk Adult or Elder Abuse.

- (1) It is unlawful for a caretaker or guardian to intentionally inflict bodily injury, unreasonable confinement, intimidation, emotional abuse, or other treatment of an elder or at-risk adult that results in physical pain or mental anguish, including exploitation or sexual abuse.
- (2) Any person who violates this Section commits a Class 5 criminal offense.

5-9-104. Caretaker Neglect of At-Risk Adult or Elder.

- (1) It is unlawful for a caretaker or guardian to:
 - (a) Fail to provide for the health, safety, or welfare of an elder or at-risk adult;
 - (b) Interfere with the delivery of resources and services necessary for the health, safety, or welfare of an elder or at-risk adult; or
 - (c) Fail to report third-party abuse or neglect of an elder or at-risk adult under the caretaker's care.
- (2) Any person who violates this Section commits a Class 5 criminal offense.

5-9-105. Exploitation of At-Risk Adult or Elder.

- (1) It is unlawful for a caretaker or guardian to wrongfully or without authorization use, take, or manage an elder or at-risk adult's funds, property, or other resources for his own or another person's profit or advantage.
- (2) Any person who violates this Section commits a Class 5 criminal offense.

5-9-106. Sentence Enhancement. Any person who commits an offense against an elder or at-risk adult may be sentenced at an increased penalty classification of one class for the respective offense.

ARTICLE 10. DOMESTIC VIOLENCE

5-10-101. Definitions. The following definitions apply to this Code.

(1) **Domestic Violence.**

- (a) An act or threatened act of violence if committed against a current or former intimate partner who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of the interaction between the persons in the relationship; by a current or former spouse; by a current or former intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; or by a person similarly situated to a spouse of the victim.
- (b) Domestic violence also includes any other crime against a person, or against property, including an animal, or any Tribal Code violation against a person, or against property, including an animal, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

(2) **Intimate Partner.** An individual who is:

- (a) Currently or formerly married to another person;
- (b) Involved or having been involved in an intimate relationship, including but not limited to, persons who are cohabitating or have cohabitated; or
- (c) Sharing one or more common children.

For a former spouse or a person who has cohabitated as a spouse, this relationship is limited based on the following factors, including but not limited to the relationship's length, the frequency of interaction between the persons, and the length of time that has elapsed since being a spouse or cohabitating as a spouse.

5-10-102. Domestic Violence Designation.

- (1) This Section provides for the designation of a crime as domestic violence, for which the Tribe may seek additional conditions at sentencing. Any crime as defined by this Code is considered domestic violence if

committed against a current or former intimate partner and is subject to the provisions in this Code.

- (2) In accordance with applicable federal law, when the Tribal Court issues a domestic violence protection order, the defendant must relinquish all firearms.

5-10-103. Violating a Domestic Violence Protection Order.

- (1) It is unlawful, after being personally served with a domestic violence protection order or having otherwise acquired actual knowledge of one from the court or from law enforcement, to knowingly violate any provision of that protection order.
- (2) Any person who violates this Section commits a Class 1 criminal offense.
- (3) Violating a domestic violence protection order is an offense enhanced by one class if:
 - (a) A person violates that order while the underlying domestic violence case is pending, and the underlying case was charged as a Class 1 offense;
 - (b) The person has been convicted of violating a domestic violence protection order in any jurisdiction within the proceeding 5 years;
 - (c) The person has a prior conviction for domestic violence; or
 - (d) The protection order was violated by committing a Class 1 offense against the victim.

5-10-104. Obstruction of Telephone Use.

- (1) It is unlawful to knowingly prevent, obstruct, or delay, by any means, another person from sending or receiving any message, communication, or report by any telephone line or cellular telephone network.
- (2) Any person who violates this Section commits a Class 4 criminal offense.

ARTICLE 11. ATTEMPT AIDING AND ABETTING, AND CRIMINAL CONSPIRACY

5-11-101. Attempt.

- (1) It is unlawful, acting with the kind of intent otherwise required for the commission of an offense, to engage 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 factual or legal impossibility.

- (2) Any person who violates this Section commits the same class of criminal offense of the underlying offense.

5-11-102. Aiding and Abetting.

- (1) It is unlawful to:
 - (a) Intentionally promote or facilitate the commission of an offense by aiding, abetting, advising, or encouraging another person in planning or committing a crime;
 - (b) Render assistance to a person with the intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a crime;
 - (c) Warn such person of impending discovery or apprehension; except that this does not apply to a warning given in an effort to bring such person into compliance with the law; or
 - (d) Provide such person with money, transportation, weapon, disguise, or other thing to be used in avoiding discovery or apprehension.
- (2) A person that violates this Section is legally accountable at the same class of criminal offense charged against the principal.

5-11-103. Criminal Conspiracy.

- (1) It is unlawful, when one intends that conduct constituting a crime be performed, to agree with one or more persons to engage in or cause the performance of such conduct, and any one of them commits an overt act in furtherance of the conspiracy.
- (2) Any person who violates this Section commits one class of criminal offense below the underlying offense.

ARTICLE 12. WEAPONS OFFENSES

5-12-101. Possession of an Illegal Weapon.

- (1) It is unlawful to knowingly have in one's possession, control, or custody any illegal weapon without a valid permit or authorized law enforcement

purpose for such weapon.

- (2) Any person who violates this Section commits a Class 3 criminal offense.

5-12-102. Possession of a Weapon on School Grounds or Tribal Facilities.

- (1) It is unlawful to bring or possess an illegal or deadly weapon in or on any school grounds within the exterior boundaries of the Reservation, except to present an authorized public demonstration or exhibition under instruction in conjunction with an organized school or class, to carry out the necessary duties and functions of a school or governmental employee that require using a weapon, or to participate in an authorized extracurricular activity or on an athletic team.
- (2) It is unlawful to bring or possess an illegal or deadly weapon on one's person on tribal campus within the exterior boundaries of the Reservation, except to present an authorized demonstration or exhibition under official instruction, to carry out the necessary duties and functions of a governmental employee that require using a weapon, or to participate in an authorized tribal activity or purpose.
- (3) This Section does not apply for those lawfully carrying or transporting hunting rifles or personal firearms in a safe manner within their vehicles.
- (4) "Tribal facilities" means the land and designated areas where tribal buildings and open areas are located, including but not limited to tribally owned businesses and their parking areas, except for special tribally designated events, RV, and camping areas owned by the Tribe.
- (5) Any person who violates this Section commits a Class 4 criminal offense.

5-12-103. Possession of a Firearm.

- (1) It is unlawful to knowingly possess, use, or carry upon one's person a firearm subsequent to the person's conviction for a felony, under state or federal law, or a Southern Ute Class 1 offense involving the use of a deadly weapon, except if the previous offense has been expunged.
- (2) It is unlawful for a person to possess a firearm or ammunition if such person has been convicted of a crime of domestic violence in any court or if such person is subject to a court order from a court of competent jurisdiction restraining such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except if the previous offense has been expunged.

- (3) The firearm or ammunition restriction applies only to an order that:
 - (a) Was issued at a hearing at which such person was present and had the opportunity to participate; or at a hearing of which such person had notice and the opportunity to be heard, whether or not the person was present; and
 - (b) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (c) By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against an intimate partner or child.
- (4) Any person who violates this Subsection (1) commits a Class 3 criminal offense and person who violates this Subsection (2) commits a Class 2 criminal offense. Either offense may result in exclusion from the Reservation under the Tribe's Exclusion and Removal Code. Any violations of related domestic violence sentences in this Section or any violations of other Sections of this chapter shall be served consecutively.

5-12-104. Possession of a Handgun by a Juvenile.

- (1) It is unlawful for a person under the age of 18 to knowingly possess a handgun. This Section does not apply when attending a firearm training course; engaging in shooting practice at a legal shooting range; engaging in a sanctioned handgun competition; hunting or trapping with a valid permit; or traveling to any of these activities with a handgun, if the handgun is unloaded and safely secured. This Section also does not apply to a person under the age of 18 who, while on the property of a parent, legal guardian, or grandparent, has the permission of that parent, legal guardian, or grandparent to possess a handgun.
- (2) Any person who violates this Section commits a Class 4 criminal offense.

5-12-105. Carrying a Concealed Weapon.

- (1) It is unlawful to carry a firearm or knife, with a blade over four inches, concealed upon one's person without the legal authority to do so. A lawfully issued concealed firearm permit from another jurisdiction does not constitute legal authority to carry a concealed firearm on the Southern Ute Indian Reservation, unless and until the permit has been filed with the Southern Ute Police Department.

- (2) Any person who violates this Section commits a Class 3 criminal offense.

5-12-106. Prohibited Use of a Weapon.

- (1) It is unlawful:
 - (a) For any person to possess any firearm on the Reservation while under the influence of, or while such person's ability to possess a firearm safely is impaired by, intoxicating liquor or drugs, or both;
 - (b) If not acting as a peace officer in the discharge of official duties, to discharge a firearm in a public place except when engaged in lawful target practice, hunting, or the ritual discharge of blank ammunition cartridges as an attendee at a funeral for a deceased person who was a veteran of the armed forces of the United States; or
 - (c) If not acting as a peace officer in the discharge of official duties, to display a deadly weapon, display any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon, or represent verbally or otherwise that he is armed with a deadly weapon in a public place in a manner calculated to alarm.
- (2) Any person who violates this Section commits a Class 5 criminal offense.

5-12-107. Careless Use of a Weapon.

- (1) It is unlawful to shoot a firearm or other weapon capable of expelling a high-velocity projectile, such as bow and arrow or crossbow, without due regard for human life or property.
- (2) Any person who violates this Section commits a Class 3 criminal offense.

ARTICLE 13. OFFENSES TO ANIMALS

5-13-101. Cruelty to Animals.

- (1) It is unlawful to knowingly, recklessly, or negligently:
 - (a) Torture or seriously overwork an animal;
 - (b) Fail to provide necessary food, care, or shelter for an animal in one's custody;
 - (c) Abandon an animal in one's custody;

- (d) Transport or confine an animal in a cruel manner;
 - (e) Kill, injure, or administer poison to an animal without legal privilege to do so; or
 - (f) Cause one animal to fight with another.
- (2) Any person who violates this Section commits a Class 5 criminal offense. Any person who is a repeat offender that violates this Section more than once commits an enhanced criminal offense by one class (e.g., Class 5 to Class 4). Repeat offender means a person who is convicted of this Section more than once and may be required to surrender animals that are subject to the offense. Animals not subject to the offense shall remain with the owner.

5-13-102. Livestock Offenses.

- (1) It is unlawful to:
- (a) Alter, obliterate, remove a brand or mark, or misbrand or mismark livestock with the purpose of deceiving another for any reason;
 - (b) Knowingly refuse 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;
 - (c) Knowingly fail to treat or dispose of a sick animal where there is substantial danger of infecting other animals,
 - (d) Fail to dip, inoculate or otherwise treat livestock in the manner that the Tribal Council or its designated representative shall direct;
 - (e) Make a false report of livestock owned;
 - (f) Purposely obstruct or interfere with a livestock roundup;
 - (g) Willfully or negligently allow livestock to occupy or graze on cultivated and enclosed lands of another or on Tribal grazing areas without permission; or
 - (h) Allow a stud to run at large.
- (2) For Subsections a, c, d, e, or f, upon receipt of the notice of violation, the owner or custodian of the livestock must be given 48 hours to correct the alleged violation, unless the owner or custodian cannot be found after a reasonable search. If the owner or custodian fails to remedy the alleged

violation within 48 hours after receipt of the notice, or he remedies the violation but commits the same violation within the 30 days following receipt of the notice of violation, he may then be charged.

- (3) Livestock found to violate this Section may be impounded in accordance with the Animal Control Code.
- (4) Any person who violates this Section commits a Class 5 criminal offense and may be ordered to make restitution for damages caused by the livestock.

ARTICLE 14. MISCELLANEOUS OFFENSES

5-14-101. Public Places Offenses.

- (1) It is unlawful with intent to harass, intimidate, or alarm another person, to:
 - (a) Follow a person in or about a public place; or
 - (b) Direct obscene language or make an obscene gesture to or at another person, in a public place.
- (2) For purposes of this this Section, “obscene” means a patently offensive description of sexual acts or solicitation to commit sexual acts, whether or not the sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus, or excretory functions.
- (3) Any person who violates this Section commits a Class 5 criminal offense.

5-14-102. Harassment by Electronic Means.

- (1) It is unlawful with intent to harass, intimidate, or alarm another person, to:
 - (a) Directly or indirectly initiate communication with a person by telephone, computer, e-mail, text message, or other electronic or data means, in a manner intended to harass, or make any comment, request, suggestion, or proposal by any electronic or data means that is obscene;
 - (b) Make a telephone call or cause a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or
 - (c) Make repeated communications at inconvenient hours that interferes in the use and enjoyment of another’s home or private

residence or other private property.

- (2) Any act prohibited by this Section may be deemed to have occurred or to have been committed at the place at which the telephone call, e-mail, or other electronic communication was either made or received.
- (3) Any person who violates this Section commits a Class 5 criminal offense.

5-14-103. Disturbing the Peace.

- (1) It is unlawful to intentionally, knowingly, or recklessly:
 - (a) Disturb, disrupt, or interfere with any public or private or religious assembly by engaging in abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct.
 - (b) Make unreasonable noise, which tends to disturb the peace, in a public place or near a private residence that one has no right to occupy.
 - (c) Make an offensively coarse utterance, gesture or display in a public place that tends to incite an immediate breach of the peace; or
 - (d) Be drunk, intoxicated, or under the influence of a controlled substance at a religious or ceremonial activity sanctioned by the Tribe.
- (2) Any person who violates this Section commits a Class 5 criminal offense.

5-14-104. Fence Cutting.

- (1) It is unlawful to knowingly cut or destroy a fence belonging to another or to the Southern Ute Indian Tribe without the consent of the owner.
- (2) Any person who violates this Section commits a Class 5 criminal offense.

5-14-105. Water Offenses.

- (1) It is unlawful to:
 - (a) Interfere with or alter 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;

- (b) Knowingly break, injure, alter, or destroy 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;
 - (c) Take 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;
 - (d) Knowingly cause or allow 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) Knowingly pollute or allow pollution known to be harmful to enter any stock tank, stock watering pond, or any water from which one knows or should know stock will be drinking.
- (2) Any person who violates this Section commits a Class 5 criminal offense.

5-14-106. Violation of the Timber Use Policy.

- (1) It is unlawful to:
- (a) Fail to obtain from the authorized representative of the Tribe or the Superintendent, Bureau of Indian Affairs, the appropriate permit before cutting timber on the Southern Ute Indian Reservation; or
 - (b) Violate the provisions or restrictions of any permit issued by the Tribe or the Superintendent, Bureau of Indian Affairs, for cutting timber on the Southern Ute Indian Reservation.
- (2) Any person who violates this Section commits a Class 5 criminal offense.

ARTICLE 15. PENALTIES

5-15-101. Criminal Offense Penalties and Damages.

- (1) Criminal offenses will be prosecuted and sentences imposed consistent with the Indian Civil Rights Act and applicable law in accordance with the Tribe's Criminal Procedure Code and the schedule of criminal penalties that Tribal Council will adopt and may amend at any time by subsequently enacted resolutions.

- (2) Where not contrary to Tribal or applicable federal law, the Tribal Court may consider as persuasive authority, law from other jurisdictions, including from other tribes.
- (3) For any criminal offense without a specific penalty under this Criminal Code, Tribal Court may impose a minimal jail sentence or fine, or both, in accordance with the criminal penalty schedule.
- (4) To further the Tribe's goal of rehabilitation and to ensure that defendants charged with possession of drugs have the opportunity for treatment programs without the consequence of conviction, the various entities within the criminal justice system will exercise discretion when arresting, prosecuting, and sentencing any person for drug use and possession offenses, including but not limited to diversion, deferred prosecution, and treatment program attendance.
- (5) The Tribal Court may also award restitution to any victim where appropriate.

TITLE 5

CRIMINAL CODE

History and Amendments¹

Title 5 adopted by Tribal Resolution No. 80-120, approved by the Bureau of Indian Affairs (B.I.A.) 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(A) (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 B.I.A. and effective on 11/13/85.

Title 5 section and page numbering scheme revised and amended by Tribal Resolution No. 89-34, effective on March 21, 1989.

Title 5 amended by Tribal Resolution No. 98-115, approved by the B.I.A. effective on November 18, 1998.

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Title 5 amended by Tribal Resolution No. 00-172, approved by the B.I.A., effective on September 27, 2000.

Title 5 amended by Tribal Resolution No. 2010-84.

Title 5 – Criminal Code repealed and replaced by Tribal Resolution No. 2023-212, approved by the B.I.A. on November 28, 2023, and effective on March 1, 2024.

¹ 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.