TITLE IV

Criminal Offenses/Sex Offenders

Standing Rock Sioux Tribal Code of Justice

Ordinance 325-16 - Resolution 217-16

Approved April 6, 2016

BY

***

Standing Rock Sioux Tribal Council

ORDINANCE NO. 325-16

BE IT FURTHER RESOLVED, that **TITLE IV, CRIMINAL OFFENSES,** of the Code of Justice of the Standing Rock Sioux Tribe, be and the same is hereby approved.

ATTACHED PAGES

RESOLUTION NO. 217-16

BE IT FURTHER RESOLVED, that pursuant to the power vested in the Standing Rock Sioux Tribal Council under the Constitution of the Standing Rock Sioux Tribe, the foregoing **Ordinance No. 325-16**, approving **TITLE IV, CRIMINAL OFFENSES,** be and the same is hereby approved; and

BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

CERTIFICATION

We, the undersigned, Chairman and Secretary of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of 17 members, of whom 13 constituting a quorum, were present at a meeting duly and regularly called, noticed, convened and held on the 06th day of **APRIL, 2016**, and that the foregoing resolution was duly adopted by the affirmative vote of 10 members, with 0 opposing, and with 3 not voting. **THE CHAIRMAN'S VOTE IS NOT REQUIRED EXCEPT IN CASE OF A TIE.**

DATED THIS 06th DAY OF APRIL, 2016.

ATTEST:

FOR Dave Archambault II, Chairman
Standing Rock Sioux Tribe

Adele M. White, Secretary
Standing Rock Sioux Tribe

[OFFICIAL TRIBAL SEAL]

Meeting Date: 04/06/2016
Motion No. 10

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TITLE IV – CRIMINAL OFFENSES

CHAPTER 1. GENERAL PROVISIONS

4-101. Criminal Offenses Based on Voluntary Conduct

No person shall be convicted of an offense except based on either: (a) conduct which includes a voluntary act, or (b) the omission to perform an act of which the defendant is physically capable and has a legal duty to perform the act.

4-102. States of Mind

(a) For the purposes of this Title, or any other provision of the Standing Rock Sioux Tribal Code of Justice setting forth a criminal offense, a person shall be guilty of an offense when she or he possesses the requisite state of mind for the particular offense. Depending on the offense, a person may be criminally culpable if his or her conduct is intentional, negligent and/or reckless, which terms are further defined in subsection (c) of this Section.

(b) If any provision in this Title, or any other provision of the Standing Rock Sioux Tribal Code of Justice setting forth a criminal offense, does not specify the requisite state of mind necessary to constitute the commission of the offense, or if the provision does not provide explicitly that a person may be guilty without culpability, the culpability that is required is intentional.

(c) Any lesser degree of required culpability is satisfied if the proven degree of culpability is higher. In order from highest to lowest, the degrees of culpability are:

1. **Intentional.** A defendant's state of mind is intentional with respect to a result or to conduct if the defendant's conscious objective is to engage in such conduct or to cause such a result.

2. **Knowing**. Conduct is knowing if, when a defendant engages in the conduct, he knows or has a firm belief, unaccompanied by substantial doubt, that he is doing so, whether or not it is his purpose to do so.

3. **Negligent.** Conduct is negligent if, with respect to a result or to a circumstance, a person should be aware of a substantial and unjustifiable risk that such a result will occur or that such a circumstance exists, and his or her conduct involves significant deviation from the standard of care that a reasonable person would observe.

4. **Reckless.** Conduct is reckless if, with respect to a result or to a circumstance, a person consciously disregards a substantial risk that such a result will occur or that such a circumstance exists, and the risk is of such a nature and degree that its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the situation.

4-103. Applicability and Jurisdiction

The provisions of this Title shall be applicable to the fullest extent allowable under the law and the jurisdiction of the Standing Rock Sioux Tribe, including to all Indians who commit an offense within the exterior boundaries of the Reservation.

In addition, and in compliance with the Violence Against Women Act of 2013, P.L. 113-4 - as signed into law on March 7, 2013 and codified in the United States Code, and as amended from time to time - Chapter XVII of this Title shall also apply to any non-Indian falling under the jurisdiction of the Tribe pursuant to federal law and applicable provisions of this Title. Furthermore, any person who violates the provisions of this Code – including any non-Indian who, pursuant to federal law, may not be subject to the criminal jurisdiction of the Tribe under a particular offense - may also be subject to civil penalties, fines, and other punishments by the Court, as deemed necessary for the violation.

4-104. Penalties

a) Offenses in the Standing Rock Sioux Tribal Code of Justice are divided into three classes, which are denominated and subject to maximum penalties as follows:

1. **Felony** – for which a maximum penalty of one (1) year imprisonment, a fine of five thousand dollars ($5,000.00), or both, may be imposed.

2. **Class A misdemeanor** – for which a maximum penalty of six (6) months imprisonment, a fine of one thousand dollars ($1,000.00), or both, may be imposed.

3. **Class B misdemeanor** – for which a maximum penalty of 30 days imprisonment, a fine of five hundred dollars ($500.00), or both, may be imposed.

4. **Infraction** – for which a maximum penalty of a fine of $250 may be imposed.

(b) Notwithstanding the maximum incarceration and fine provisions in subsection (a) of this Section, for any criminal conviction under the Code of Justice, any other reasonable and applicable sanction may be imposed as provided in Title III of the Code of Justice, including restitution, probation conditions and forfeiture.

(c) A conviction for an infraction is not a criminal conviction, and thus does not itself constitute a criminal record, notwithstanding any other provision of this Title, and regardless of whether the underlying offense for which an infraction is or may be charged is a "criminal act." However, all other relevant provisions of the Standing Rock Sioux Tribal Code of Justice that pertain to criminal process and procedure, such as the investigation, arrest and judicial process of crimes, shall apply to the criminal process and procedure for infractions.

(d) Notwithstanding subsection (c), a conviction for an infraction, for which subsequent convictions are punishable at an elevated class of offense, shall constitute a first offense for the purposes of

enhancing the class of offense for subsequent offenses.

(e) When a reference is made in the Standing Rock Sioux Tribal Code of Justice to calculating "one level down" or "one level up" from an offense level to determine another offense level, such offense levels shall be ranked, from highest to lowest, in the order they are enumerated in subsection (a) of this Section.

4-105. Other Criminal Provisions in Code of Justice

The criminal provisions enumerated in this Title shall not be an exclusive list of those crimes which a person may be charged with or convicted of, as long as the crime is otherwise enumerated in another Title of the Standing Rock Sioux Tribal Code of Justice. Any criminal provision located elsewhere in the Standing Rock Sioux Tribal Code of Justice shall be valid and enforceable, and all general provisions located in this Title (defenses, penalties, etc.), and any relevant provisions in Title I, Title II and Title III shall apply to such provision.

4-106. Definitions.

The following definitions shall be applicable throughout this Title; provided that an individual Chapter of this Title may have definitions found within the Chapter applicable solely to that Chapter; if there is any conflict between a definition in this Section and any Chapter-specific definition found elsewhere in this Title, the Chapter-specific definition shall control for that Chapter only:

a) "Apprehension of bodily injury" shall mean any act which is intended to cause another person to reasonably fear imminent bodily injury.

b) "Bodily injury" means any impairment of physical condition, including physical pain.

c) "Child" or "children" means a person or persons under 18 years of age.

d) "Child pornography" means any visual depiction - including any photograph, film, video, picture or computer or computer-generated image or picture, whether made or produced by electronic, mechanical or other means - of sexually explicit conduct, where:

1. The production of such visual depiction involves the use of a child engaging in sexually explicit conduct;

2. Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or

3. Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

e) "Criminal Act" means:

1. Any act punishable by a term of detention, jail or imprisonment under the laws of the Standing Rock Sioux Tribe, of any state or of the United States; and

2. Any action which constitutes an infraction under the laws of the Standing Rock Sioux Tribe, even though a conviction for an infraction shall not be considered a criminal conviction for purposes of giving the individual a criminal record.

f) "Criminal gang" means any ongoing organization or group of three (3) or more persons, whether formal or informal, that acts in concert or agrees to act in concert with the purpose that any of those persons alone or in any combination commit or will commit a criminal act.

g) "Deadly Weapon" is any firearm, knife or device, instrument, material or substance, whether animate or inanimate, which is calculated or designed to inflict death or serious bodily harm, or to be used in a manner likely to inflict death or serious bodily harm.

h) "Drive-by Shooting" - The discharge of a firearm, paintball gun, BB or pellet gun, or the propulsion of an explosive device, from a motor vehicle whether the vehicle is moving or stopped at the time of discharge.

i) "Elder" or "elderly person" means a person 60 years of age or older.

j) "Firearm" means any device which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka or cannon.

k) "Gang Member" or "Criminal Gang Member" shall mean an individual to whom two (2) or more of the following criteria that indicate gang membership apply:

(1) Self-Proclamation;

(2) Witness testimony or official statement;

(3) Written or electronic correspondence;

(4) Paraphernalia or photographs;

(5) Tattoos;

(6) Clothing or colors; and

(7) Any other indicia of gang activity.

l) "Gang-related offense" shall mean any offense under this Code committed by a criminal gang member with the intent to promote or further the objectives of a gang.

m) "Indian" shall mean any person who is a member of a federally-recognized Tribe, or is generally subject to the criminal jurisdiction of an Indian Tribe.

n) "Loiter" shall mean to remain in any one place with no apparent purpose.

o) "Participate, or participating, in a criminal gang" shall mean:

(i) Intentionally organizing, managing, directing or supervising a criminal gang with the intent to promote or further the criminal objectives of the criminal gang;

(ii) Knowingly enticing or inducing others to engage in violence or intimidation to promote or further the criminal objectives of the criminal gang;

(iii) Furnishing advice or direction in the conduct, financing or management of a criminal gang's affairs with the intent to promote, or further the objectives of, a criminal gang; or

(iv) Committing, attempting to commit or soliciting one (1) or more criminal offenses proscribed by this Title or the Standing Rock Sioux Tribal Code of Justice with the intent of promoting or advancing the objectives of a criminal gang.

p) "Reservation" shall mean lands within the exterior boundaries of the Standing Rock Sioux Indian Reservation, as defined by the Act of March 2, 1889 (25 Stat. L. 888).

q) "Serious bodily injury" means: (i) a bodily injury which creates a substantial risk of death; (ii) a bodily injury which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily member, organ or mental faculty; (iii) unconsciousness; (iv) extreme pain; (v) bone fracture; or (vi) impediment of air flow or blood flow to the brain or lungs.

r) "Sexual act" means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva or the mouth and the anus. For the purposes of this Code, sexual contact between the penis and the vulva, or between the penis and the anus, occurs upon penetration, however slight. Emission is not required.

s) "Sexual activity" means "sexual act" or "sexual contact" as those terms are defined in this Title.

t) "Sexual contact" means any touching of the sexual or other intimate parts of the person with the intention of arousing or gratifying sexual desire, whether the intimate parts are clothed or unclothed.

u) "Sexually explicit conduct" means actual or simulated:

1. Sexual activity;

2. Sadistic or masochistic abuse; or

3. Lascivious exhibition of the genitals, pubic area or rectal area of any person, or bare feminine breasts.

v) "Simulated" means the explicit depiction of conduct that creates the appearance of such conduct.

w) "Visual depiction" means any developed and/or undeveloped film, photograph, slide and/or videotape, and any photocopy, drawing, printed or written material, and any data stored on computer disk, digital media, or by electronic means that are capable of conversion into a visual image.

CHAPTER 2. DEFENSES

4-201. Burden of Proof

(a) The Tribe has the burden of proof of proving each element of an offense beyond a reasonable doubt.

(b) Whenever the defendant introduces sufficient evidence of a defense to support a reasonable belief as to the existence of that defense, the Tribe has the burden of disproving such defense beyond a reasonable doubt, unless the Code or another ordinance expressly requires the defendant to prove the defense by a preponderance of evidence.

4-202. Ignorance or Mistake

(a) Ignorance or mistake as to a matter of fact or law is a defense if:

1) The ignorance or mistake negates the necessary mental state required for the commission of an offense; or

2) The law provides that the state of mind established by such ignorance or mistake constitutes a defense.

(b) Whenever in this Code an offense depends on a child's being below the age of 13 years of age, it is no defense that the defendant did not know the child's age, or reasonably believed the child to be 13 years of age or older. When criminality depends on the child's being below a critical age other than 13 years of age, it is an affirmative defense of the defendant to prove that he reasonably believed the child to be above the critical age.

4-203. Alcoholism and Intoxication

(a) Alcoholism and intoxication are not defenses.

(b) Alcoholism and intoxication do not, in themselves, constitute a mental disease or defect within the meaning of Section 4-204.

4-204. Mental Disease or Defect

(a) A person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect as defined in the Title VII of the Standing Rock Sioux Code of Justice, he or she lacks substantial capacity either to appreciate the wrongfulness of that conduct or to conform that conduct to the requirements of law.

(b) As used in this Section, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

4-205. Self-Defense

(a) The use of reasonable force is a defense when a person reasonably believes that such force is immediately necessary to protect himself or herself.

(b) A person is not justified in using force for the purpose of resisting arrest, execution of process or other performance of duty by a public servant, regardless of whether the conduct of the public servant is lawful. Notwithstanding the other provisions of this Section, excessive force on the part of the public servant may be resisted.

(c) A person is not justified in using force if the conduct of the person against whom force is used was provoked by the defendant himself with the intent to cause bodily injury or serious bodily injury to that other person.

4-206. Defense of Others

The use of force in order to defend a third person is a defense if:

(a) The defendant reasonably believes that the person whom he seeks to protect would be justified in using such protective force;

(b) The defendant has not, by provocation or otherwise, forfeited the right of self-defense; and

(c) The defendant reasonably believes that intervention is necessary for the protection of such other person.

4-207. Defense of Property

The use of force, other than deadly force, is a defense if the defendant reasonably believes that such force is necessary to prevent or terminate conduct which the defendant reasonably believes to be the commission or attempted commission of a crime involving trespass on, damage to or theft of property.

4-208. Use of Deadly Force

The use of deadly force is a defense only where the defendant reasonably believes that such force is necessary to protect himself or herself or another person against death, serious bodily harm, kidnapping, burglary of an occupied home, a sexual act as defined in Section 4-1401 compelled by force or threat or to prevent or terminate the commission or attempted commission of arson.

CHAPTER 3. COMPLICITY, SOLICITATION, AND ATTEMPTS

4-301. Accomplice

(a) A person may be convicted of an offense based upon the conduct of another person when:

1) Acting with the state of mind sufficient for the commission of the offense, the defendant causes another person to engage in such conduct;

2) He is a co-conspirator and his association with the offense meets the requirements of any of the other subdivisions of this subsection; or

3) Having a legal duty as a law enforcement officer to prevent the offense, the defendant fails to make proper effort to do so

(b) The offense level for being an accomplice to a crime is the same as the offense level for being a principal in the crime.

(c) A person is not liable under this Section for the conduct of another if he terminates his complicity prior to the commission of the offense and gives timely warning to law enforcement authorities, or otherwise makes proper effort to prevent the commission of the offense.

4-302. Attempts

(a) A person is guilty of an attempt to commit a crime who intentionally does or omits to do

anything which, under the circumstances as the defendant believes them to be, is an act or omission constituting a substantial step toward the commission of a crime.

(b) A person who engages in conduct intended to aid another person to commit a crime that would establish complicity under Section 4-301 if the crime were committed by such other person is guilty of an attempt to commit the crime, although the crime is not actually committed or attempted, or if the other person is not guilty of committing or attempting the crime.

(c) A "substantial step" is any conduct which is strongly corroborative of the firmness of the actor's intent to complete the commission of the crime.

(d) Conduct is not criminal that could only be characterized as an attempt to commit a crime that is itself defined solely in terms of attempt.

(e) The offense level for an attempted crime is one level down from the level for the crime had it been completed except when an infraction is charged.

4-303. <u>Solicitation.</u>

(a) A person is guilty of criminal solicitation if he commands, induces, entreats or otherwise attempts to persuade another person to commit a particular offense, whether as principal or accomplice, with intent to promote or facilitate the commission of that offense, under circumstances strongly corroborative of that intent, and if the person solicited commits an overt act in response to the solicitation.

(b) It is a defense to a prosecution under this section that, if the criminal object were achieved, the defendant would be a victim of the offense, or the offense is so defined that his conduct would be inevitably incident to its commission, or he otherwise would not be guilty under the statute defining the offense or as an accomplice under Section 4-301 of this Title.

(c) It is no defense to a prosecution under this Section that the person solicited could not be guilty of the offense because of lack of responsibility or culpability, or other incapacity or defense.

(d) The offense level for criminal solicitation is the same as the offense level for the offense solicited.

4-304. <u>Conspiracy.</u>

(a) A person commits conspiracy if he agrees with one or more persons to engage in or cause conduct which, in fact, constitutes an offense or offenses, and any one or more of such persons does an overt act to effect an objective of the conspiracy. The agreement need not be explicit but may be implicit in the fact of collaboration or existence of other circumstances.

(b) If a person knows or could expect that one with whom he agrees has agreed or will agree with

another to effect the same objective, he shall be deemed to have agreed with the other, whether or not he knows the other's identity.

(c) A conspiracy shall be deemed to continue until its objectives are accomplished, frustrated or abandoned. "Objectives" includes escape from the scene of the crime, distribution of booty and measures, other than silence, for concealing the crime or obstructing justice in relation to it. A conspiracy shall be deemed abandoned if no overt act to accomplish its objectives has been committed by any conspirator during the applicable period of limitations.

(d) It is no defense to a prosecution under this Section that the person with whom such person is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution or is otherwise not subject to justice.

(e) Accomplice liability for offenses committed in furtherance of the conspiracy is to be determined as provided in Section 4-301 of this Title.

(f) The offense level for conspiracy is the same as for the crime which was the objective of the conspiracy.

CHAPTER 4. PARDON

4-401. Power of Pardon

The Tribal Pardon Commission shall have the sole and exclusive power to grant pardons after final conviction for all offenses by the Standing Rock Sioux Tribal Court. The Commission shall have no power to grant reprieves, commute sentences, or remit fines and forfeitures. One member shall be designated by the Council as Chairman of the Commission.

4-402. Application for Pardon

All applications for pardon shall be filed in writing with the Chairman of the Commission. A conviction shall not be eligible to be considered for a pardon until ten (10) years after whichever of the following occurred latest in time regarding the conviction for which a pardon is being requested: no portion of the sentence remained unexecuted; the time period for appeal ended; any costs or fees – including restitution – were paid (or the time to pay expired); all requirements of probation were satisfied (including the completion of any required alcohol and/or drug evaluation and/or treatment); and the period of probation ended.

Upon receiving an application, the Chairman shall provide copies of the application to each member of the Commission and shall cause the application to be posted in public places on the Reservation. This public notice shall state the date on which the application will be considered by the Commission. The application shall be sworn to by the applicant under oath or by a person authorized to act on his or her behalf. The application shall state concisely the ground upon which the pardon is sought and in addition shall contain the following facts:

(a) The name under which the applicant was convicted, and every alias by which he has been known;

(b) The date and crime the applicant was convicted of;

(c) The date and terms of the sentence imposed against him;

(d) The name of the Trial Judge who presided at the trial;

(e) If an appeal was taken from the judgment of conviction, the date of the final determination by the Supreme Court;

(f) The age, birthplace, parentage, occupation and residence of the applicant; and

(g) A statement of all other arrests, indictments, information and convictions, if any, against the applicant, regardless of jurisdiction.

4-403. Hearing on Application

The Commission Chairman shall schedule hearing on each application for pardon on a quarterly basis. Prior to the hearing the Commission Chairman shall obtain and make available to all members of the Commission the complete record of the conviction from the Standing Rock Sioux Tribal Court, together with any recommendation by the Chief Judge of the Standing Rock Sioux Tribal Court. The Commission Chairman or Commission may also issue process requiring the presence of any person subject to its jurisdiction before it, with or without books and papers deemed relevant to the hearing; the failure of such person to comply with the process shall be considered criminal contempt under Section 4-904 and shall be punished accordingly. The applicant shall be given the opportunity to appear of the hearing, and have the right to be represented by counsel at his own expense. All testimony before the Commission shall be under oath and open to the public. The Tribal Prosecutor shall also be allowed to testify under oath before the Commission if the Prosecutor recommends denying the pardon.

4-404. Determination by the Commission

The Commission shall, at the close of the hearing, determine whether to grant the application absolutely, grant the application upon conditions, or deny the application. A pardon shall be granted only upon a clear showing that the public interest necessitates it and only by at least three (3) members of the Commission who attended the hearing. The decision of the Commission shall be final and no appeal of the Commission decision shall be taken. The Commission Chairman shall cause a record to be kept of every application for pardon, and the determination of the Commission thereon.

4-405. Effect of Pardon

(a) Except as set forth in subsection (b) of this Section, a pardon properly granted by the Commission shall pardon the effects of a prior conviction, and relieve the pardoned individual

from all legal disabilities resulting from his or her conviction. Records of the Court shall be amended or otherwise updated to recognize that the individual has been granted a pardon for the specific pardoned offense(s). A pardon does not have the same effect as the expungement of a record.

(b) Notwithstanding the provisions of subsection (a) of this Section, a properly granted pardon does not pardon a felony offense, nor relieve the pardoned individual from legal disability resulting from their conviction, for the purpose of the eligibility requirements for running for, or serving on, Tribal Council under Article III of the Constitution of the Standing Rock Sioux Tribe, and even a pardoned, sealed or expunged felony conviction shall stand as a bar to an individual being qualified to seek and hold membership on the Tribal Council.

CHAPTER 5. CRIMES AGAINST PERSONS (GENERAL)

4-501. Murder

Whoever intentionally causes the death of another human being is guilty of murder.

Murder is a felony.

4-502. Manslaughter

A person who recklessly causes the death of another human being is guilty of manslaughter.

Manslaughter is a felony.

4-503. Negligent Homicide

A person who negligently causes the death of another human being is guilty of negligent homicide.

Negligent homicide is a felony.

4-504. Causing or Aiding Suicide

A person who intentionally causes another person to commit or attempt to commit suicide by force, duress or deception, or aids or solicits another to commit or attempt to commit suicide, is guilty of causing or aiding suicide.

Causing or aiding suicide is a Class A misdemeanor.

4-505. Kidnapping

Whoever by force, threat, or deception:

(a) Removes another from his or her place of residence or business, or a substantial distance from the vicinity where he or she was located; or

(b) Confines another for a substantial period in a place of isolation;

is guilty of kidnapping.

Kidnapping is a felony.

4-506. Illegally Harboring a Child or Incompetent Person

Whoever removes, confines, harbors, or keeps a child or other incompetent person without the consent of a parent, guardian, or other person responsible for general supervision of the welfare of the child or other incompetent person is guilty of illegally harboring a child or incompetent person; provided, however, that no person shall be guilty of illegally harboring a child or incompetent person who notifies a law enforcement officer of the child or other incompetent person's whereabouts.

Illegally harboring a child or incompetent person is a Class B misdemeanor for the first offense, and a Class A misdemeanor for each subsequent offense.

4-507. False Imprisonment

A person who intentionally makes or causes the unlawful arrest, imprisonment or detention of another person is guilty of false imprisonment if the defendant knows or reasonably should have known that the arrest, imprisonment or detention is without lawful authority.

False imprisonment is a Class A misdemeanor.

4-508. Simple Assault

A person who:

(a) Intentionally causes bodily injury to another;

(b) Recklessly or negligently causes bodily injury to another with a deadly weapon; or

(c) Attempts by physical menace to put another in apprehension of serious bodily injury;

is guilty of a simple assault.

Simple assault is a Class A misdemeanor.

4-509. Aggravated Assault

Whoever:

(a) Intentionally causes serious bodily injury to another;

(b) Intentionally causes bodily injury to another with a deadly weapon;

(c) Recklessly causes serious bodily injury to another under circumstances manifesting indifference to the value of human life;

(d) Causes bodily injury to an elected or appointed public official at any time; or

(e) Causes bodily injury to a Tribal employee who is on duty at the time of the injury, or causes bodily injury to a law enforcement officer;

is guilty of aggravated assault.

Where the victim of an assault is a public official or employee, it is no defense that the action of the public official or employee was unlawful so long as the official or employee reasonably appeared to be acting within the scope of his or her duties or employment.

Aggravated assault is a felony.

4-510. Stalking

A person commits the offense of stalking if the person purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of bodily injury, serious bodily injury or death by repeatedly:

(a) Following the stalked person; or

(b) Harassing, threatening, or intimidating the stalked person, in person or by mail, electronic communication or any other action, device or method.

Stalking is a Class A misdemeanor for a first or second offense; stalking is a Felony for a third or subsequent offense.

4-511. Interfering With Emergency Communication

An individual commits the offense of interfering with emergency communication if:

A. The individual knowingly prevents or interferes with another individual's ability to place an emergency telephone call or to request assistance in an emergency from a law enforcement agency, medical facility or other agency or entity the primary purpose of which is to provide for the safety of individuals; or

B. The individual recklessly renders unusable a telephone that would otherwise be used by another individual to place an emergency telephone call or to request assistance in an emergency from a law enforcement agency, medical facility or other agency or entity the primary purpose of which is to provide for the safety of individuals.

An offense under this section is a Class A misdemeanor.

4-512. Harassment

A person is guilty of harassment if he or she intentionally commits one of the following acts for the purposes of retaliation or intimidation:

(a) Causes physical damage to or destruction of the property of the alleged victim or another person; or

(b) Threatens the alleged victim or another person, either directly or indirectly, and places that person in reasonable fear of harm to person or property. The fear must be a fear that a reasonable person would have under the circumstances.

An offense under this section is a Class B misdemeanor.

4-513. Family Violence

(a) Any person who commits an act of violence – as the term is defined in Chapter 17 of this Title - against a family member is guilty of family violence.

(b) The offense of family violence is a Class A misdemeanor unless the act of violence would be a felony if committed under another section of this Title, in which case the offense of family violence is a felony.

(c) For the purposes of this Section, "family member" means a parent, child, sibling and persons related by blood or marriage and, for the purpose of the issuance of a domestic violence

protection order, any other person with a sufficient relationship to the abusing person as determined by the court under 4-1706(a), as made applicable by subsection (d) of this Section. For purposes of this section, "family member" does not include a "spouse or intimate partner" as the term is defined in Chapter 17, as violence against such individuals is prohibited and governed by Chapter 17.

(d) Any victim of family violence shall be entitled to seek the issuance of a domestic violence protection order under Section 4-1706 of this Title and/or a temporary ex parte protection order under Section 4-1707 of this Title, and have a foreign protection order domesticated pursuant to Section 4-1708 of this Title. For the purposes of a protection order issued under this Section, any reference in the aforementioned Sections to "domestic violence" or "domestic abuse" shall be construed to include the act or offense of "family violence" as contemplated by this Section.

(e) Any individual who is subject to a domestic violence protection order for family violence under this Section, and who violates such protection order, shall be subject to the criminal offense of Violation of a Domestic Violence Protection Order under Section 4-1705 of this Title. For the purposes of a protection order alleged to be violated under this Section, any reference in the aforementioned Section 4-1705 to "domestic violence" or "domestic abuse" shall be construed to include the act or offense of "family violence" as contemplated by this Section.

CHAPTER 6. CRIMES AGAINST PROPERTY

4-601. Arson

A person who:

(a) Intentionally starts or maintains a fire or causes an explosion that destroys or damages a building or occupied structure, motor vehicle, field, livestock, crop or standing timber of another;

(b) Recklessly starts or maintains a fire or causes an explosion that destroys or damages a building or occupied structure, motor vehicle, field, livestock, crop or standing timber of another; or

(c) Negligently starts or maintains a fire or causes an explosion that destroys or damages a building or occupied structure, motor vehicle, field, livestock, crop or standing timber of another;

is guilty of arson.

Intentional arson is a felony, reckless or negligent arson is a Class A misdemeanor.

4-602. **Burglary**

A person who enters or remains in a building or occupied structure, or a separately secured or occupied portion thereof, with intent to commit any crime therein, is guilty of burglary.

Burglary is a felony.

4-603. **Criminal Trespass**

Whoever knowing that he or she is not licensed or privileged to do so:

(a) Enters or surreptitiously remains in any building or occupied structure, or a separately secured or occupied portion-thereof;

(b) Enters or remains in any place as to which notice against trespass is given by:

1) Actual communication to the defendant;

2) Posting in a manner reasonably likely to come to the attention of intruders; or

3) Fencing or other enclosure manifestly designed to exclude intruders; or

(c) Intentionally allows livestock to occupy or graze on the lands of another person;

is guilty of criminal trespass.

Criminal trespass is a Class A misdemeanor under subsection (a) of this Section. Under subsections (b) and/or (c) of this Section, a first offense for Criminal Trespass is an infraction, and any subsequent offense is a Class B misdemeanor.

4-604. **Theft**

Whoever:

(a) Intentionally takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;

(b) Intentionally obtains the property of another by misrepresentation or deception;

(c) Intentionally obtains the property of another by threat;

(d) Receives, retains or disposes of the property of another knowing that it has been stolen or believing that it has probably been stolen, unless the property is received, retained or disposed of with intent to restore to the owner;

(e) Comes into control of property of another that the defendant knows to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, and with intent to deprive the owner thereof, and fails to take reasonable measures to restore the property to a person entitled to have it;

(f) Intentionally obtains services, known by the defendant to be available only for compensation, by avoiding payment for the services, or having control over the disposition of the services of another to which he or she is not entitled and knowingly diverts those services to the defendant's own benefit or to the benefit of another not entitled thereto;

(g) Intentionally disposes of, uses or transfers any interest in property which has been entrusted to the defendant as a parent or guardian for a child, for any reason other than the purpose or purposes for which the property was placed in trust; or

(h) Intentionally misbrands or alters any brand or mark on any livestock of another person;

is guilty of theft.

Conduct denominated **"theft"** in this Section constitutes a single offense embracing the several offenses heretofore known as embezzlement, extortion, fraud, larceny, receiving stolen property, and the like.

Theft is a felony, if the amount involved exceeds $500. Otherwise it is a Class A misdemeanor.

4-605. <u>Robbery</u>

Whoever, in the course of committing or attempting to commit a theft or burglary, or while fleeing from the commission or attempted commission of a theft or burglary:

(a) Inflicts or attempts to inflict bodily injury upon another; or

(b) Threatens or menaces another with immediate bodily injury;

is guilty of robbery.

Robbery is a felony.

4-606. Criminal Mischief

Whoever intentionally or recklessly:

(a) Damages tangible property of another;

(b) Tampers with tangible property of another so as to endanger any person; or

(c) While under the influence of alcohol or other intoxicating substance: defaces, damages or tampers with the property of another;

is guilty of criminal mischief.

Criminal mischief is a Class A misdemeanor if the defendant intentionally causes pecuniary loss in excess of $500.00. Otherwise, it is a Class B misdemeanor.

4-607. Injury to Public Property

Whoever, without proper authority, intentionally, recklessly or negligently:

(a) Uses or injures any Tribal or other public property;

(b) Causes a substantial interruption or impairment of a public service; or

(c) While under the influence of alcohol or other intoxicating substance: defaces, damages, or tampers with any tribal, state or any agency of the federal government, while that property is located within the boundaries of the Standing Rock Sioux Tribe Indian Reservation;

Is guilty of injury to public property.

Injury to public property is a Class A misdemeanor if the defendant causes pecuniary loss in excess of $500. Otherwise, it is a Class B misdemeanor.

4-608. Issuing Bad Checks

Whoever issues any check, draft or order upon any bank or other depository knowing that there are not sufficient funds in the defendant's account to pay such check, draft or order in full upon presentation is guilty of issuing bad checks.

Issuing bad checks is a Class A misdemeanor if the check, draft or order is in excess of $500. If the check, draft or order is $500 or less it is a Class B misdemeanor for the first or second offense, and a Class A misdemeanor for all third or subsequent offenses, regardless of value.

4-609. Forgery

Whoever, with intent to deceive or harm the Tribe or any other person:

(a) Knowingly and falsely makes, completes, executes, authenticates, issues, transfers or alters any writing; or

(b) Knowingly causes a forged instrument to be recorded in any office where deeds are registered, with intent to defraud;

is guilty of forgery.

Forgery is a felony if the amount involved exceeds $500. Otherwise, it is a Class A misdemeanor.

CHAPTER 7. DEADLY WEAPONS AND EXPLOSIVES

4-701. Possession of a Firearm by Convicted Felon

Any person who has been convicted of a felony by this Court, or any other Tribal, state or federal Court, who has in his possession or under his control a firearm is guilty of unlawful possession by a convicted felon.

Unlawful possession by a conviction felon is a felony.

4-702. Carrying Concealed Deadly Weapons

Whoever carries, concealed about his or her person, any of the following weapons, unless they are carried with specific Tribal, state or federal governmental approval, except where prohibited, is guilty of carrying a concealed deadly weapon:

(a) Any blackjack, bill, bludgeon, metal knuckles, any knife with a blade over six (6) inches long or other sharp or dangerous instrument usually employed in the attack or defense of a person; or

(b) Any firearm, whether loaded or unloaded.

In addition to the penalty prescribed for such an offense, any person convicted of carrying a concealed deadly weapon may be ordered by the Standing Rock Sioux Tribal Court to forfeit any such weapon to the Tribe.

Carrying a concealed deadly weapon is a Class A misdemeanor.

4-703. Carrying a Loaded Firearm in a Motor Vehicle

Any person, other than a law enforcement officer when acting as such, who carries a firearm with a round in the chamber on a public highway and in a motor vehicle, is guilty of carrying a loaded firearm in a motor vehicle.

Carrying a loaded firearm in a motor vehicle is a Class A misdemeanor.

4-704. Possession of Explosives

Whoever possesses, transports or controls any nitroglycerin, dynamite or other dangerous explosive, unless such explosive is possessed in the prosecution of or to affect a lawful purpose, is guilty of possession of explosives.

In addition to the penalty prescribed for such an offense, any person convicted of possession of explosives may be ordered by the Standing Rock Sioux Tribal Court to forfeit any such explosives to the Tribe.

Possession of explosives is a Class A misdemeanor.

4-705. Use of Deadly Weapons by Children

Whoever is a parent, guardian, or other person having charge or custody of any child under 15 years of age, and knowingly allows such child to carry or use in public any deadly weapon as defined in Section 4-106(g), except when such child is in the company and under the direct control of such parent, guardian or other adult person authorized by the parent or guardian, is guilty of use of deadly weapons by children.

Use of deadly weapons by children is a Class A misdemeanor.

4-706. Unlawful Discharge of Firearms

Whoever discharges firearms within 100 yards of an occupied building or structure, unless the defendant is entitled to possession of the building or structure or is authorized to do so by a person entitled to such possession, is guilty of unlawful discharge of firearms.

In addition to the penalty prescribed for such an offense, any person convicted of unlawful discharge of firearms may be ordered by the Standing Rock Sioux Tribal Court to forfeit any such firearm to the Tribe.

Unlawful discharge of firearms is a Class A misdemeanor.

4-707. **Carrying a Deadly Weapon during Commission of a Felony**

Whoever has in their possession a deadly weapon during the commission, or attempted commission, of a felony is guilty of carrying a deadly weapon during commission of a felony.

Carrying a deadly weapon during commission of a felony is a felony.

CHAPTER 8. CRIMINAL OFFENSES INVOLVING DRUGS

4-801. **Definitions**

(1) **"Agent"** means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser of drugs; for the purpose of this section, the term includes a common or contract carrier, public warehouseman or employee of the carrier or warehouseman who possesses a drug in the usual course of his legal business or employment.

(2) **"Compound"** means any processes in which two (2) or more chemical substances are mixed together to form a drug.

(3) **"Conveyance"** means anything that may be used for the purpose of transporting. Such term includes, but is not limited to, motor vehicles, airplanes, boats, livestock and any container.

(4) **"Deliver"** means the actual, constructive or attempted transfer of a drug from one person to another whether or not there is an agency relationship.

(5) **Dispense"** means to deliver a drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the drug for that delivery.

(6) **"Distribute"** means the delivery of a drug.

(7) **"Drug"** means any controlled substance defined and/or described in the Uniform Controlled Substances Act, 21 U.S.C. § 812, as updated, without prior authorization.

(8) **"Forfeiture"** means the legal process by which the Standing Rock Sioux Tribal Court shall take control of any property used in the manufacture, transport or sale of any drug.

(9) **"Ingestion"** means the intentional intake into the body of any drug.

(10) **"Manufacture"** means any act which would result in the creation of a drug.

(11) **"Member"** means any enrolled member of the Standing Rock Sioux Tribe.

(12) **"Non-Indian"** means any person not an enrolled member of the Standing Rock Sioux Tribe or any other federally-recognized tribe.

(13) **"Non-Member"** means a person not a member of the Standing Rock Sioux Tribe but an enrolled member of a different federally-recognized tribe.

(14) **"Possession"** means the knowing and willful control of a drug and/or drug paraphernalia.

(15) **"Practitioner"** means a physician, dentist, pharmacist, nurse, veterinarian or other person licensed, registered or otherwise permitted to distribute, dispense or administer drugs in the course of a professional practice.

(16) **"Precursor"** means the immediate chemical intermediary used or likely to be used in the manufacture of a drug.

(17) **"Prepare"** means any act which would tend to make a drug ready for sale.

(18) **"Prescription"** means a written direction for the preparation, distribution and therapeutic use of medicine.

(19) **"Prescribed Medication"** means a drug that is obtained through a prescription prepared by a practitioner.

(20) **"Process"** means any act or series of acts which is intended to produce a drug.

(21) **"Production"** means the manufacturing, planting, cultivating, growing or harvesting of a drug.

(22) **"Standing Rock Sioux Tribe"** herein referred to as "Tribe."

(23) **"Standing Rock Tribal Court"** herein referred to as "Court."

(24) **"Over the counter sale"** means the retail sale of a drug or product other than a controlled or imitation-controlled substance.

(25) **"Ultimate User"** means a person who lawfully possesses a drug for his/her own use, for the use of a member of his/her household or for administration to an animal owned or controlled by him/her or by a member of his/her household.

4-802. **Criminal Sale of Drugs**

(1) A person commits the offense of criminal sale of drugs if he/she sells, barters, exchanges, gives away, or offers to sell, barter, exchange or give away any drug no matter how small an amount.

(2) The criminal sale of drugs shall be a felony.

(3) Practitioners and agents lawfully acting in the usual course of their professional practice or business are exempt from this Section.

4-803. **Criminal Possession of Drugs**

(1) A person commits the offense of criminal possession of drugs if he/she possesses any amount of a drug unless the drug was obtained directly or pursuant to a valid prescription order from a practitioner, while acting in the course of the practitioner's professional practice, or except as otherwise authorized by a practitioner.

(2) Criminal possession of drugs shall be a Class A Misdemeanor.

(3) Ultimate users who have properly obtained a drug through a prescription, and practitioners and agents acting in the lawful usual course of their professional practice or business, are exempt from this Section.

4-804. **Criminal Possession of a Drug With Intent to Deliver Or Sell**

(1) A person commits the offense of criminal possession with intent to deliver or sell if he/she possesses a drug with intent to sell, deliver or distribute.

(2) Whether a person has "intent to sell or deliver" depends on the circumstances, including but not limited to possessing a drug in an amount larger than would normally be intended for personal use, the separation of drugs into separate packages and other evidence of intent.

(3) Criminal possession of a drug with intent to deliver or sell shall be a felony.

(4) Practitioners and agents lawfully acting in the usual course of their professional practice or business are exempt from this Section.

4-805. **Fraudulently Obtaining Drugs**

(1) A person commits the offense of fraudulently obtaining drugs if he/she obtains or attempts to obtain a drug by:

(a) Fraud, deceit, misrepresentation or subterfuge;

(b) The use of a forged, altered or fictitious prescription;

(c) The use of a false name or address on a prescription;

(d) The concealment of a material fact; or

(e) The representation that he/she is a manufacturer, wholesaler, distributor or dispenser of drugs.

(2) Fraudulently obtaining drugs shall be a felony.

4-806.1. **Criminal Ingestion of Drugs While Pregnant**

A person who, while pregnant, intentionally ingests, inhales or otherwise takes a drug, unless the drug was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, and the drug was ingested as prescribed by such practitioner, is guilty of a class A misdemeanor. The venue for a violation of this section exists in either the jurisdiction in which the drug was ingested, inhaled or otherwise taken into the body or the jurisdiction in which the drug was detected in the body of the accused.

4-806.2 **Criminal Possession of Toxic Substances**

(1) A person commits the offense of criminal possession of toxic substances if he/she inhales, ingests or possesses with the intent to inhale or ingest, for the purpose of altering his/her mental state, any substance with toxic effects that is not manufactured for human consumption or inhalation including, but not limited to: rubbing alcohol, gasoline, fingernail polish, paint and paint thinners, acetone, aerosol propellants and chemical solvents.

(2) Criminal possession of toxic substances shall be a Class B misdemeanor, unless the person was pregnant at the time of ingestion, in which case she is guilty of a class A misdemeanor.

(3) The venue for a violation of this section exists in either the jurisdiction in which the toxic substance was ingested, inhaled or otherwise taken into the body or the jurisdiction in which

the toxic substance was detected in the body of the accused.

4-807. Criminal Sale of Drugs To A Child

(1) A person commits the offense of criminal sale of drugs to a child if he/she knew, or should have known, that the person receiving the drug was under the age of eighteen (18) years of age.

(2) Criminal sale of drugs to a child shall be a felony.

(3) Practitioners and agents lawfully acting in the usual course of their professional practice or business are exempt from this Section.

4-808. Possession of Drug Paraphernalia

(1) A person commits the offense of possession of drug paraphernalia if he/she has any equipment, products and/or materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a drug. It includes, but is not limited to:

(a) Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant that is a drug or from which a drug can be derived;

(b) Kits used, intended for use or designed for use in manufacturing, compounding, converting or producing, processing or preparing drugs;

(c) Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant that is a drug;

(d) Testing equipment used or intended for use in identifying or analyzing the strength, effectiveness or purity of drugs;

(e) Scales and balances used, intended for use or designed for use in weighing or measuring drugs;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, dextrose and lactose, used, intended for use or designed for use in "cutting" drugs;

(g) Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from - or in otherwise cleaning or refining - marijuana;

(h) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding drugs;

(i) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of drugs;

(j) Containers and other objects used, intended for use or designed for use in storing or concealing drugs;

(k) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil or other drugs as defined in this Chapter;

(l) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(m) Water pipes or carburetor tubes and devices;

(n) Smoking and carburetor masks;

(o) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(p) Miniature cocaine spoons and cocaine vials;

(q) Chamber, carburetor, electric or air driven pipes;

(r) Chillums;

(s) Bongs; and/or

(t) Ice pipes or chillers.

(2) Words or phrases used in this part that are not defined by this section have the meaning given there by the definitions contained in this Chapter unless the usage clearly indicates a different intent.

(3) In determining whether an object is drug paraphernalia, the following shall be considered, in addition to all other logically relevant factors:

(a) Statements by an owner or by anyone in control of the object concerning its use;

(b) Prior convictions, if any, of an owner or of anyone in control of the object, under any tribal, state or federal law relating to any controlled substance or drug;

(c) The proximity of the object, in time and space, to a direct violation of this Section;

(d) The proximity of the object to drugs;

(e) The existence of any residue of drugs on the object;

(f) Direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom he/she knows, or should reasonably know, intends to use the object to facilitate a violation of this provision. The innocence of any owner or of anyone in control of the object as to a direct violation of this provision does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia;

(g) Instructions, oral or written, provided with the object concerning its use;

(h) Descriptive materials accompanying the object which explain or depict use;

(i) National or local advertising concerning its use;

(j) The manner in which the object is displayed for sale;

(k) Whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(l) Direct or circumstantial evidence of the ratio of sales of the objects to the total sales of the business enterprise;

(m) The existence and scope of legitimate uses for the object in the community; and

(n) Expert testimony concerning its use.

(4) Possession of drug paraphernalia shall be a Class A misdemeanor.

(5) Practitioners and agents lawfully acting in the usual course of their professional practice or business are exempt from this Section.

4-809. Restrictions on Sale of Methamphetamine Precursors

(1) **Products:** any single entity or combination pseudoephedrine (PSE) and ephedrine (EPH).

(2) **Sales Limits:** any entity and/or combination PSE and EPH may be sold and purchased in quantities no greater than two (2) packages per single transaction. No single entity and/or combination PSE and EPH may be sold to a person under 18 years of age.

(3) **Product Exemptions:** single entity and/or combination PSE and EPH may be sold and purchased in quantities no greater than two (2) packages per single transaction sales limit if the sale is made pursuant to a valid prescription drug order.

(4) **Recordkeeping Requirements:** Retailers must require, obtain and maintain a written record for purchases from the purchaser's government issued ID (name, date of birth, photo description), the product being purchased, quantity of product, date and time of sale. Records must be maintained for one (1) year. All packages must be sold behind the counter with a notice posted. Retailers are immune from civil liability, hereunder, unless they are found to have acted with gross negligence or intentional, wanton, or willful misconduct, in which case a retailer shall be subject to a civil penalty up to $500 per violation.

4-810. Alternate Sentencing Authority

A person convicted under above 4-808(3) subsections B, C, D, E, F, G, or H - if shown to be an excessive or habitual user of drugs or toxic substances, either from the face of his/her record or by a presentation of evidence to the sentencing judge - may, after the offender has served at least one (1) month of the sentence and at the discretion of the Court, be committed to the custody of any institution for rehabilitative treatment for a term of no less than three (3) months and then returned to complete the rest of the sentence. Payment for such treatment shall be arranged by the offender or his/her family and shall not be borne by the Tribe or the Tribal Court.

4-811. Seizures and Forfeiture Related to Drugs

(1) The following property is subject to forfeiture to the Standing Rock Sioux Tribal Court:

(a) All drugs seized pursuant to this section;

(b) All money, raw materials, products and equipment of any kind that is used or intended for use in manufacturing, preparing, cultivating, compounding, processing, production, delivering, importing or exporting any drug in violation of in this section;

(c) All above property used or intended for use as a container for any item which falls under subsections (a) and/or (b) of this Section;

(d) All conveyances which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of any item which falls under subsections (a) and/or (b) of this Section;

(e) All conveyances in which a drug is unlawfully kept, deposited or concealed;

(f) All books, records and research products and materials, including formulas, microfilm, tapes and dates that are used or intended for use in violation of this section;

(g) All equipment, products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a drug; and

(h) Everything of value furnished or intended to be furnished in exchange for a drug in violation of this section, all proceeds traceable to such an exchange, and all money, negotiable instruments and securities used or intended to be used to facilitate any violation of this section.

(2) **<u>Exceptions to Forfeiture:</u>**

(a) No conveyance used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this subsection unless it appears that the owner or other person in charge of the conveyance is a consenting party to or knowledgeable of a violation of this Section.

(b) No conveyance is subject to forfeiture under this subsection because of any act or omission established by the owner of the conveyance to have been committed or omitted without his/her knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he/she neither had knowledge of nor consented to any

violation of this section.

(3) <u>When Property May Be Seized:</u>

(a) A law enforcement officer who has probable cause to make an arrest for a violation of this section, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a drug or probable cause to believe that a conveyance has been used to keep, deposit or conceal a drug shall seize the conveyance so used or intended to be used. The officer shall immediately deliver a conveyance that is seized to the Bureau of Indian Affairs, Law Enforcement Services; Standing Rock Sioux Tribe, Law Enforcement Services, Fort Yates, North Dakota, to be held as evidence until forfeiture is declared or release is ordered.

(b) All property subject to forfeiture under this Section may be seized by a law enforcement officer under a search warrant issued by the Tribal Court. Seizure without a warrant may be made if:

(i) The seizure is made incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(ii) The property subject to seizure has been the subject of a prior judgment in favor of the Tribe in a criminal proceeding or a forfeiture proceeding based on this Title;

(iii) The law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety;

(iv) The law enforcement officer has probable cause to believe that the property was issued or is intended to be used in violation of the criminal provisions of this Title; or

(v) The law enforcement officer has probable cause to believe that the property will be removed from the Standing Rock Sioux Reservation if not seized at that time.

(4) <u>Forfeiture of Property:</u>

(a) Petition to institute forfeiture proceedings:

(i) The office of the Tribal Prosecutor may file a petition to institute forfeiture proceedings with the Clerk of the Tribal Court within 45 days of the office of the Tribal Prosecutor's receipt of written notice of the seizure of property subject to forfeiture by law enforcement officers or agents.

(ii) The Clerk shall issue a summons at the request of the petitioning party who shall cause the petition and summons to be served upon all owners or claimants of the property pursuant to the requirements of Section 2-102 of the Standing Rock Sioux Tribal Code of Justice.

(b) Hearing concerning forfeiture of property.

At the time the forfeiture petition is filed, the clerk of court shall schedule a hearing on the petition not less than 30 days after date of filing. The hearing shall comply with the provisions of Section 2-103 of the Standing Rock Sioux Tribal Code of Justice.

(c) Default:

(i) There is a rebuttable presumption of forfeiture of property.

(ii) If the individual who was served with process under subsection (a) of this Section fails to appear at the hearing, the Court shall order the property forfeited to the Standing Rock Sioux Tribe by default.

(d) Proof required or permitted at hearing to rebut the presumption of forfeiture.

At the hearing scheduled under subsection (b) of this Section, the Court may order a further evidentiary hearing at which:

(i) An owner of the property must prove that the conveyance was not used for the purpose charged.

(ii) An owner of the property must prove, in the alternative, that the use of the property occurred without his/her knowledge or consent.

(iii) A claimant of a secured interest in the property must prove that his/her interest is bona fide and that it was created without the knowledge that the property was being used or was to be used for the purpose charged.

(e) Disposition of property following evidentiary hearing.

(i) If the Court finds that the property was not used for the purpose charged or that the property was used without the knowledge or consent of the owner, it shall order the

property released to the owner of record as of the date of the seizure.

(ii) If the Court finds that the property was used for the purpose charged and, that the use was with the knowledge or consent of the owner, the property shall be disposed of as follows:

a. If proper proof of his/her claim is presented at the hearing by the holder of a security interest, the Court shall order the property released to the holder of the security interest with all title, right and interest to the owner extinguished. If the value of the property is more than the security interest, the additional value shall be returned to the Standing Rock Sioux Tribal Court.

b. If no claimant exists, and the Standing Rock Sioux Tribe wishes to retain the property for its official use, it may do so. If such property is not to be retained, it shall be sold.

(f) Disposition of proceeds of sales and/or fines.

(i) Whenever property is seized, forfeited and sold under the provisions of this Section, the net proceeds of the sale must be remitted to the Chief Financial Officer of the Standing Rock Sioux Tribe to be divided as follows:

a. One-half to the Tribal Court Account; and

b. One-half to the Drug Enforcement Team to be used for drug enforcement purposes, to the extent such a Team has been formally established; if no such Team has been formally established, all proceeds shall be provided to the Tribal Court Account.

4-812. **Unlawful Manufacture of Drugs.**

(a) Whoever manufactures, prepares, cultivates, compounds, produces or processes a drug or marijuana shall be guilty of Unlawful Manufacture of Drugs.

(b) Unlawful Manufacture of Drugs is a felony.

(c) Practitioners and agents lawfully acting in the usual course of their professional practice or business are exempt from this Section.

CHAPTER 9. OFFENSES INVOLVING GOVERNMENTAL PROCESSES

4-901. Bribery

Whoever intentionally offers, gives or agrees to give to another, or solicits, accepts or agrees to accept from another, anything of value as consideration:

(a) To influence the recipient's official action as a public servant; or

(b) To induce the recipient's violation of a known legal duty as a public servant;

is guilty of bribery.

Bribery is a felony.

4-902. Interfering with Elections.

Any person who:

(a) Coerces, threatens, injures or intimidates another person with respect to voting, qualifying to vote, qualifying or campaigning as or for a candidate for elective office, or qualifying or acting as an election official, in any primary, special or general election of the Standing Rock Sioux Tribe;

(b) In connection with any election of the Standing Rock Sioux Tribe, makes or induces any false voting registration;

(c) In connection with any election of the Standing Rock Sioux Tribe, offers, gives or agrees to give anything of pecuniary value to another person as consideration for the recipient's voting or withholding his or her vote for voting for or against any candidate or issue or for such conduct by another;

(d) Solicits, accepts or agrees to accept anything of pecuniary value as consideration for conduct prohibited under Subsections (b) or (c); or

(e) Otherwise obstructs or interferes with the lawful conduct of an election of the Standing Rock Sioux Tribe or registration therefore;

is guilty of interfering with elections.

Interfering with elections in violation of Subsections (a), (b), (c) or (d) is a felony.
Interfering with elections in violation of Subsection (e) is a Class A misdemeanor.

4-903. Perjury

A person who, in any official proceeding of the Standing Rock Sioux Tribe, makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material, is guilty of perjury. Falsification is material if it could have affected the course or outcome of the proceeding.

Perjury is a felony.

4-904. Criminal Contempt

Whoever:

(a) Misbehaves in the presence of any Court of the Standing Rock Sioux Tribe or misbehaves so near thereto as to obstruct the administration of justice; or

(b) Disobeys or resists any process, order, subpoena, warrant or command of the Court;

Is guilty of criminal contempt.

Criminal contempt is a Class A Misdemeanor.

4-905. Resisting Arrest

Whoever, with intent to prevent a law enforcement officer affecting an arrest:

(a) Flees from a law enforcement officer, after being told by an officer that he or she is under arrest; or

(b) Creates a substantial risk of bodily harm to the officer or any other person, or employs justifying substantial force to overcome the resistance;

is guilty of resisting arrest.

A person is guilty of an offense under this Section regardless of whether the arrest resisted is lawful or unlawful.

Resisting arrest is a Class A Misdemeanor.

4-906. Escape

A person who unlawfully removes himself or herself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period is guilty of escape. **"Official Detention"** does not include supervision of probation or parole, or constraint incidental to release from on bail.

Escape is a felony.

4-907. Hindering a Law Enforcement Officer

A person who:

(a) Fails, when requested by a law enforcement officer, to assist in the arrest, capture or confinement of any person engaged in the commission of any offense, or who has committed, has been charged with, or has been convicted of any offense;

(b) Fails to obey any other lawful order of a law enforcement officer; or

(c) Attempts or assists another to prevent an arrest;

is guilty of hindering a law enforcement officer.

Hindering law enforcement officers is a Class A Misdemeanor.

4-908. Tampering With Witnesses or Information

A person who threatens to injure any person or property, or with intent to influence a witness or informant, offers, confers or agrees to confer any benefit on a witness, informant or prospective witness in a judicial or official proceeding to induce the witness or informant to:

(a) Testify falsely;

(b) Withhold any testimony, information, document or thing;

(c) Elude legal process summoning him to testify or supply evidence; or

(d) Absent himself from a judicial or official proceeding to which he has been legally summoned;

Is guilty of tampering with witnesses or information.

Tampering with witnesses or informants is a felony.

4-909. Tampering With Physical Evidence

A person who, knowing a judicial or official proceeding has been instituted or believing a judicial or official proceeding is pending or about to be instituted, alters, destroys, mutilates, conceals or removes a record, document or thing with intent to impair its verity or availability is guilty of tampering with physical evidence.

Tampering with physical evidence is a felony.

4-910. Possession of Drug or Deadly Weapon Inside a Detention Facility

An inmate of a jail, prison or other penal institution who possesses a drug or deadly weapon inside any jail, prison or other penal institution is guilty of Possession of Drug or Deadly Weapon Inside a Detention Facility.

Possession of Drug or Deadly Weapon Inside a Detention Facility is a felony.

4-911. Fleeing a Law Enforcement Officer.

(a) Any person, not the driver of a motor vehicle, who willfully fails to stop or who otherwise flees or attempts to elude, in any manner, a pursuing law enforcement officer, when given a visual or audible signal to stop, is guilty of a **Class A Misdemeanor.**

(b) Any person who, while the driver of a motor vehicle, willfully fails or refuses to bring the vehicle to a stop or otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or law enforcement officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a **felony**.

(c) A signal to stop under either subsection (a) or (b) of this Section is sufficient to require a driver to stop under this Section if it is perceptible to the person and:

1. If given from a vehicle, the signal is given by hand, emergency light, voice or siren, and the stopping vehicle is appropriately marked showing it to be an official law enforcement vehicle; or

2. If not given from a vehicle, the signal is given by hand, voice, emergency light or siren, and the officer is in uniform or prominently displays the officer's badge of office.

CHAPTER 10. DISORDERLY CONDUCT AND RELATED OFFENSES

4-1001. Disorderly Conduct

Whoever, with intent to harass, alarm or annoy another person, or in reckless disregard of the fact that another person is harassed, annoyed or alarmed by his or her behavior:

(a) Engages in fighting; in violent, tumultuous or threatening behavior; or in making unreasonable noise;

(b) Presents a danger to themselves or others;

(c) In a public place, uses abusive or obscene language, or make an obscene gesture;

(d) Obstructs vehicular or pedestrian traffic, or the use of a public facility;

(e) Persistently follows another person in or about a public place or places;

(f) Creates a hazardous, physically offensive or seriously alarming condition by any act which serves no legitimate purpose;

(g) Makes an offensive gesture or symbol which by its nature tends to incite anger, unlawful conduct or breach of the peace by others;

(h) Discharges a firearm or explosive or displays any weapon, potential weapon or simulated deadly weapon with intent to cause alarm or in reckless disregard of causing alarm; or

(i) Uses a fixed optical device that enhances or records a visual occurrence to view through any window of another person's property, or uses a surveillance camera to capture an image from the dwelling or accessory structure of another person; however, an individual using a surveillance camera has seven (7) days from notice by a law enforcement officer to direct or shield the camera so as to not capture an image from another person's dwelling or accessory structure before there is an offense;

is guilty of disorderly conduct.

Except as provided in Section 4-1001.1 of this Title, first offense Disorderly Conduct is an infraction, second offense Disorderly Conduct is a Class B misdemeanor, and all subsequent offenses are Class A misdemeanors.

4-1001.1. **Disorderly Conduct on the Premises of an Elder.**

(a) If an individual commits Disorderly Conduct as set forth in 4-1001, where such action occurs at or on the premises of an elder, such conduct is a Class A misdemeanor regardless of the number of such offenses the individual has previously committed. Conviction for Disorderly Conduct on the Premises of an Elder may constitute a first offense Disorderly Conduct under 4-1001 for the purposes of enhancing the class of offense for subsequent offenses.

(b) For purposes of this Section, "premises" means the permanent or temporary home of an elder, which includes both the structure in which the elder resides and the grounds surrounding the structure within the legal property designation.

4-1002. **Disrupting Meetings or Processions**

A person who, without lawful authority, intentionally prevents or disrupts a lawful meeting, procession or gathering, is guilty of disrupting meetings or processions.

Disrupting meetings or processions is a Class B misdemeanor, unless the gathering disrupted is a funeral, wake or burial, in which case it is a Class A misdemeanor.

4-1003. **Cruelty to Animals**

Whoever intentionally, recklessly or negligently subjects any animal to cruel mistreatment is guilty of cruelty to animals.

Cruelty to animals is a Class B misdemeanor for a first offense, and a Class A misdemeanor for each subsequent offense.

4-1004. **Illegal Use or Sale of Fireworks**

Whoever:

(a) Uses fireworks on any day other than July 1 through July 5 of any given year;

(b) Uses fireworks between midnight and eight o'clock a.m. (8:00 a.m.) on July 1 through July 5 of any given year;

(c) Uses fireworks within city limits on any day of the year; or

(d) Sells fireworks on any day other than July 1 through July 5 of any given year;

shall be guilty of Illegal Use or Sale of Fireworks.

Illegal Use or Sale of Fireworks shall be an Infraction.

CHAPTER 11. ILLEGAL GAMBLING

4-1101. Illegal Gambling

(a) A person is guilty of illegal gambling if he or she intentionally:

(1) Conducts a wagering pool or lottery for his or her own profit;

(2) Receives wagers for or on behalf of another person for his or her own profit;

(3) Alone or with others owns, controls, manages or finances a gambling business;

(4) Knowingly leases or otherwise permits a place to be regularly used to carry on a gambling business or maintain a gambling house.

(b) Illegal Gambling does not include:

(1) Lawful contests of speed, strength, or endurance in which awards are made only to entrants or to the owners of entrants;

(2) Pools in which no profit by the organizer is gained;

(3) Lawful business transactions;

(4) Bingo, raffles or other like activities conducted by the Tribe, any subordinate tribal entity, any district organization or any entity chartered or owned in whole by the Tribe, or a religious, charitable or other nonprofit organization, provided that in the case of bingo, the organization is in compliance with Title XXIII of the Standing Rock Sioux Tribal Code of Justice; or

(5) Class III gaming activities conducted by the Tribe, any subordinate tribal entity, any district organization or any entity chartered or owned in whole by the Tribe, provided that such gaming is in compliance with Title XXIII of the Code.

Illegal Gambling is a Class A misdemeanor.

CHAPTER 12. EXPLOITATION OF CHILDREN

4-1201. Contributing to the Delinquency of a Child

Any person 18 years of age or older, including any parent or other person with lawful custody of a child, who intentionally, negligently or recklessly causes, encourages, contributes to or aids in a child committing a delinquent act or status offense, shall be guilty of Contributing to the Delinquency of a Child.

Contributing to the delinquency of a child is a Class A misdemeanor.

4-1202. Failure to Support Dependent Persons

Any person who fails to provide support which the defendant can provide and knows he or she is legally obliged to provide to a spouse, child - whether born in or out of wedlock - or other dependent, is guilty of failure to support dependent persons.

Failure to support dependent persons in a Class B misdemeanor for the first offense and a Class A misdemeanor for each subsequent offense.

4-1203. Failure to Send Children to School

A person who, without justification or excuse, fails to send any child under his or her care to school, is guilty of failure to send children to school. For the purposes of this Section, a child is any person of an age five (5) to 18 years.

Failure to send children to school is a Class B misdemeanor for the first offense, and a Class A misdemeanor for each subsequent offense.

4-1204. Child Abuse

(1) Any person who:

(a) Threatens the child with serious bodily injury;

(b) Inflicts bodily injury or serious bodily injury to the child to the extent that the child requires medical attention;

(c) Inflicts emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's normal range of performance and behavior, with due regard to the child's culture; or

(d) Intentionally physically assaults a woman who is pregnant;

is guilty of child abuse.

In addition to the penalty prescribed for such an offense, any person convicted of Child Abuse will be ordered by the Standing Rock Sioux Tribal Court to receive professional counseling and appropriate treatment. As used in subsection (2), it is no defense that the defendant did not know the victim was pregnant. Provided, however, that any parent, guardian, or other person responsible for the care and supervision of a minor may use reasonable force upon the minor for the purpose of safeguarding or promoting the minor's welfare, including prevention and punishment of the minor's misconduct, and the maintenance of proper discipline, and the use of such force shall not be child abuse under this Section, provided that it must not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.

First and second offense child abuse is a Class A misdemeanor. Each subsequent offense is a felony. In determining the number of counts of child abuse, the number of children subjected to the abuse may be considered.

4-1205. <u>Child Neglect</u>

(1) Any person who, with a duty to do so:

(a) Fails or refuses to provided proper or necessary subsistence, supervision, education, medical care or any other care necessary for the child's health guidance or well-being;

(b) Abandons the child or subjects the child to mistreatment;

(c) Fails to provide proper parental care;

(d) Provides an environment that is injurious to the child's welfare; or

(e) Consumes excessive amounts of intoxicating beverages while pregnant;

is guilty of child neglect.

(2) For the purpose of subsection (1)(e) of this Section:

a. It shall be presumed that a parent has consumed an excessive amount of intoxicating beverages if their blood alcohol content was 0.10 percent or greater. If there is less than 0.10 percent by weight of alcohol, such fact shall not give rise to any presumption that

the defendant had consumed an excessive amount of intoxicating beverages, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

In addition to the penalty prescribed for such an offense, any person convicted of Child Neglect will be ordered by the Standing Rock Sioux Tribal Court to receive professional counseling and appropriate treatment.

First and second offense child neglect is a Class A misdemeanor. Each subsequent offense is a felony. In determining the number of counts of child neglect, the number of children subjected to the neglect may be considered.

4-1206. Failure to Report Child Abuse or Unauthorized Disclosure of Reports

Any person required by this Code to report a case of known or suspected child abuse or neglect who willfully fails to do so, or any person who permits or encourages the unauthorized disclosure of reports made or confidential information obtained under that section, shall be guilty of a Class A misdemeanor.

4-1207. Encouraging a Child to Participate in Gang Crime

Any person 18 years of age or older who knowingly or willfully causes, aids, abets, encourages, solicits, or recruits a person under the age of 18 to participate in a criminal gang is guilty of encouraging a child to participate in gang crime.

Encouraging a child to participate in gang crime is a Class A misdemeanor.

CHAPTER 13. LIQUOR AND TOBACCO LAWS

4-1301. Failure to Comply with Tribal Liquor Laws

A person is guilty of failure to comply with tribal liquor laws if the person:

(a) Sells any intoxicating beverage within the Standing Rock Indian Reservation without a license from the Tribe; or

(b) Sells any intoxicating beverage to a person who is under the age of 21.

In addition to the penalty prescribed for such an offense, all intoxicants in the possession, or under the control, of any person convicted of failure to comply with laws regulating the sale of alcoholic beverages may be seized and destroyed upon order of the Standing Rock Sioux Tribal Court.

Failure to comply with tribal liquor laws is a Class A misdemeanor.

4-1302. **Unlawful Use of Intoxicating Beverages by a Person under the Age of 21**

(a) A person under the age of 21 who:

1. Purchases or has in his or her possession any intoxicating beverage;

2. Enters any establishment where intoxicating beverages are sold; or

3. Consumes any intoxicating beverages;

is guilty of unlawful use of intoxicating beverages by a person under the age of 21.

(b) A person under the age of 21 does not violate subsection (a)(2) of this Section if such person enters or is present in such an establishment as provided by Title VIII of the Standing Rock Sioux Tribal Code of Justice and any applicable law of the relevant State;

(c) An person under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another person under 21 years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene, or was the individual in need of medical assistance and cooperated with medical assistance and law enforcement personnel on the scene. The maximum number of individuals that may be immune for any one occurrence is five (5) individuals.

In addition to the penalty prescribed for such an offense, all alcoholic beverages possessed in violation of this Section will be forfeited to the Tribe, and disposed of in accordance with the order of the Court. ***Unlawful possession of intoxicating beverages by a person under the age of 21 is an infraction for the first offense. Subsequent offenses shall be a Class B misdemeanor.***

4-1303. **Selling Intoxicating Beverages to Pregnant Women**

Any retailer who knowingly sells intoxicating beverages to a pregnant woman is guilty of selling intoxicating beverages to pregnant women.

Selling intoxicating beverages to pregnant women is a Class A misdemeanor.

4-1304. **Selling Tobacco Products to a Child**

Any retailer who sells tobacco products to a child is guilty of selling tobacco products to a child.

Selling tobacco products to a child is a Class B misdemeanor for the first offense, while any subsequent offenses are Class A misdemeanors.

CHAPTER 14. SEX OFFENSES

4-1401. Rape

A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of rape if:

(a) The defendant compels the other person to submit by force or by any threat that would render a person of reasonable firmness incapable of resisting;

(b) The defendant or someone else, with the defendant's knowledge, has substantially impaired the other person's power to appraise or control that person's conduct by administering or employing, without the other person's knowledge, intoxicants, drugs or another similar substance with intent to prevent resistance;

(c) The other person is unconscious or otherwise incapable of appraising the nature of the conduct;

(d) The other person is physically incapable of declining participation in, consenting to or communicating unwillingness to engage in the sexual contact;

(e) The defendant knows that the other person submits because the other person falsely supposes the defendant to be someone else, unless the defendant is the spouse of the other person;

(f) The other person has not yet reached 13 years of age;

(g) The defendant knows that the other person suffers from a mental disease or defect which renders that person incapable of understanding the nature of his or her conduct, unless the defendant is the spouse of the other person; or

(h) The other person is in official custody of, or otherwise detained in, a hospital, prison or other similar institution and the defendant has supervisory or disciplinary authority over the detained person.

Rape is a felony.

4-1402. **Statutory Rape**

A person 18 years of age or older who engages in a sexual act with another person who is 13 years of age or older but less than 18 years of age is guilty of statutory rape, if the defendant is at least 3 years older than the child.

Statutory rape is a felony.

4-1403. **Indecent Exposure**

A person, with intent to arouse, appeal to or gratify that person's lust, passions or sexual desires, who exposes his or her genitals or other intimate parts – including the penis, vulva, anus, or feminine breasts - under circumstances likely to cause affront or alarm is guilty of indecent exposure.

Indecent exposure is a Class A misdemeanor.

4-1404.1 **Promoting Prostitution.**

Whoever:

(a) Operates a prostitution business or a house of prostitution;

(b) Induces or otherwise intentionally causes another to become engaged in sexual activity as a business, including by knowingly persuading, inducing, enticing or coercing any individual to engage in prostitution; or

(c) Knowingly procures a prostitute for a prostitution business or a house of prostitution, including by transporting any individual to or within the Reservation with intent that such individual engage in prostitution;

Is guilty of Promoting Prostitution.

Promoting Prostitution is a felony.

4-1404.2 **Facilitating Prostitution.**

Whoever:

a. Knowingly solicits a person to patronize a prostitute, including by persuading, inducing, enticing or coercing any individual to patronize a prostitute;

b. Knowingly procures a prostitute for a patron;

c. Knowingly leases or otherwise permits a place controlled by the actor, alone or in association with others, to be regularly used for prostitution, promoting prostitution or facilitating prostitution, or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities or taking other legally available means; or

d. Knowingly induces or otherwise intentionally causes another to remain a prostitute. A person who is supported in whole or substantial part by the proceeds of prostitution, other than the prostitute or the prostitute's child or a person whom the prostitute is required by law to support, is presumed to be knowingly inducing or intentionally causing another to remain a prostitute;

Is guilty of Facilitating Prostitution.

Facilitating Prostitution is a felony.

4-1404.3 **Prostitution**

(1) A person who:

(a) Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business;

(b) Loiters in view of any public place with the intent of being hired to engage in sexual activity;

(c) Solicits another person with the intention of being hired to engage in sexual activity; or

(d) Agrees to engage in sexual activity with another for money or other items of pecuniary value;

Is guilty of Prostitution.

(2) It shall be an affirmative defense to a charge of prostitution that the individual is or was a victim of sex or human trafficking, or acted under duress or otherwise against his or her will.

(3) It shall be presumed that any individual under the age of 18 who had engaged or is engaging in an offense under this section was or is doing so against his or her will unless the Tribe can overcome such presumption beyond a reasonable doubt.

Prostitution is a Class A misdemeanor.

4-1404.4 **Hiring a Prostitute**

An individual who:

(a) Hires or offers or agrees to hire another individual with the intention of engaging in sexual activity;

(b) Enters or remains in a house of prostitution with intent to engage in sexual activity; or

(c) Solicits another person to hire a prostitute or commit an act of prostitution;

is guilty of a Hiring a Prostitute.

Hiring a Prostitute is a Class A Misdemeanor, unless the Prostitute is under the age of 18, in which case it is a Felony.

4-1405. **Sexual Assault**

A person who intentionally has sexual contact with another, or causes such other person to have sexual contact with the defendant, is guilty of sexual assault if:

(a) The defendant compels the other person to submit by force or by any threat that would render a person of reasonable firmness incapable of resisting;

(b) The contact is made, or caused to be made, with knowledge that the contact is offensive to the other person;

(c) The defendant or someone else, with the defendant's knowledge, has substantially impaired the other person's power to appraise or control that person's conduct by administering or employing, without the other person's knowledge, intoxicants, drugs or another similar substance with intent to prevent resistance;

(d) The other person is unconscious or otherwise incapable of appraising the nature of the conduct;

(e) The other person is physically incapable of declining participation in, consenting to or communicating unwillingness to engage in the sexual contact;

(f) The defendant knows that the other person submits because the other person falsely supposes the defendant to be someone else, unless the defendant is the spouse of the other person;

(g) The defendant knows that the other person suffers from a mental disease or defect which renders that person incapable of understanding the nature of his or her conduct, unless the

defendant is the spouse of the other person;

(h) The other person has not yet reached 13 years of age;

(i) The defendant is 18 years of age or older, and the other person is 13 years of age or older but less than 18 years of age, if the defendant is at least 3 years older than the other person; or

(j) The other person is in official custody or otherwise detained in a hospital, prison or other similar institution and the defendant has supervisory or disciplinary authority over the detained person.

Sexual assault is a felony.

4-1406. Incest

Any person who engages in "sexual activity," as that term is defined in Section 4-106 of this Title with another person and is related to that person as: parent and child; grandparent and grandchild; brother and sister; half-brother and half-sister; aunt and nephew; uncle and niece; or cousins in the first or second degree is guilty of incest.

Incest is a felony.

4-1407. Sex Trafficking

(a) Whoever:

1. Recruits, entices, harbors, transports, provides, obtains or maintains by any means a person; or

2. Benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1) of this subsection,

knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion or any combination of such means, will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, is guilty of sex trafficking.

(b) The punishment for an offense under subsection (a) of this Section is a **felony**.

(c) In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained or maintained, the Tribe need not prove that the defendant knew that the person had not attained the age of 18 years.

(d) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be guilty of a **felony**.

(e) In this section:

1. The term "coercion" means:

   a. Threats of serious harm to or physical restraint against any person;

   b. Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

   c. The abuse or threatened abuse of law or the legal process.

2. The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.

3. The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

4. The term "venture" means any person or group of two (2) or more individuals associated in fact, whether or not a legal entity.

4-1408. **<u>Video Voyeurism</u>**

(a) Whoever has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy, shall be guilty of a **felony**.

(b) In this section:

1. The term "capture", with respect to an image, means to videotape, photograph, film, record by any means, or broadcast;

2. The term "broadcast" means to electronically transmit a visual image with the intent that it be viewed by a person or persons;

3. The term "a private area of the individual" means the naked or undergarment clad genitals, pubic area, buttocks, or female breast of that individual;

4. The term "female breast" means any portion of the female breast below the top of the areola; and

5. The term "under circumstances in which that individual has a reasonable expectation of privacy" means:

   a. Circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the individual was being captured; or

   b. Circumstances in which a reasonable person would believe that a private area of the individual would not be visible to the public, regardless of whether that person is in a public or private place.

(c) This section does not prohibit any lawful law enforcement, correctional or intelligence activity.

4-1409. **Crossing Reservation Lines With Intent to Engage in Sexual Act With Child Who Has Not Yet Reached 13 Years of Age**

(a) Whoever crosses into the Reservation with intent to engage in sexual activity with a person who has not reached the age of 13 years shall be guilty of a **felony**.

(b) In a prosecution under this section, the Tribe need not prove that the defendant knew that the other person engaging in the sexual activity had not reached the age of 13 years.

4-1410. **Sexual Abuse of a Ward.**

(a) Whoever knowingly engages in sexual activity with another person who is:

1. In official detention; and

2. Under the custodial, supervisory or disciplinary authority of the person so engaging;

Or attempts to do so, is guilty of sexual abuse of a ward, which shall be a **felony**.

(b) It is a defense under this Section, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual activity were at that time married to each other.

4-1411. **Sexual Exploitation of Children.**

(a) Any person who employs, uses, persuades, induces, entices or coerces any child to engage in, or who has a child assist any other person to engage in, or who transports any child into

the Reservation with the intent that such child engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (d), if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.

(b) Any parent, legal guardian, or person having custody or control of a child who knowingly permits such child to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct shall be punished as provided under subsection (d) of this section, if such parent, legal guardian or person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.

(c) Any person who knowingly makes, prints, or publishes, or causes to be made, printed or published, any notice or advertisement seeking or offering:

a. To receive, exchange, buy, produce, display, distribute or reproduce any visual depiction, if the production of such visual depiction involves the use of a child engaging in sexually explicit conduct and such visual depiction is of such conduct; or

b. Participation in any act of sexually explicit conduct by or with any child for the purpose of producing a visual depiction of such conduct;

shall be punished as provided under subsection (d).

(d) Any individual who violates, or attempts or conspires to violate, this section shall be guilty of a **felony.** Any organization that violates, or attempts or conspires to violate, this section shall be fined under this title.

4-1412. **<u>Selling or Buying of Children</u>**

(a) Any parent, legal guardian, or other person having custody or control of a child who sells or otherwise transfers custody or control of such child, or offers to sell or otherwise transfer custody of such child either:

(1) With knowledge that, as a consequence of the sale or transfer, the child will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

(2) With intent to promote either:

(A) The engaging in of sexually explicit conduct by such child for the purpose of producing any visual depiction of such conduct; or

(B) The rendering of assistance by the child to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be guilty of a **felony**.

(b) Whoever purchases or otherwise obtains custody or control of a child, or offers to purchase or otherwise obtain custody or control of a child either:

(1) With knowledge that, as a consequence of the purchase or obtaining of custody, the child will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

(2) With intent to promote either:

(A) The engaging in of sexually explicit conduct by such child for the purpose of producing any visual depiction of such conduct; or

(B) The rendering of assistance by the child to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be guilty of a **felony.**

4-1413. **Certain Activities Relating to Materials Involving the Sexual Exploitation of Children.**

(a) Any person who:

(1) Knowingly transports or ships by any means including by computer or mails, any visual depiction, if:

(A) The producing of such visual depiction involves the use of a child engaging in sexually explicit conduct; and

(B) Such visual depiction is of such conduct;

(2) Knowingly receives or distributes any visual depiction using any means, or knowingly reproduces any visual depiction for distribution using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or through the mails, if:

(A) The producing of such visual depiction involves the use of a child engaging in sexually explicit conduct; and

(B) Such visual depiction is of such conduct;

(3) Knowingly sells or possesses with intent to sell any visual depiction, if:

(A) The producing of such visual depiction involves the use of a child engaging in sexually explicit conduct; and

(B) Such visual depiction is of such conduct; or

(4) Knowingly possesses, or knowingly accesses with intent to view, one (1) or more books, magazines, periodicals, films, video tapes or other matter which contain any visual depiction, if:

(A) The producing of such visual depiction involves the use of a child engaging in sexually explicit conduct; and

(B) Such visual depiction is of such conduct;

shall be guilty of a **felony.**

(b) **Affirmative defense.** It shall be an affirmative defense to a charge of violating paragraph (4) of subsection (a) that the defendant:

(1) Possessed less than three (3) matters containing any visual depiction proscribed by that paragraph; and

(2) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof:

(A) Took reasonable steps to destroy each such visual depiction; or

(B) Reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

4-1414. **Certain Activities Relating to Material Constituting or Containing Child Pornography.**

(a) Any person who:

(1) Knowingly mails, or transports or ships by any means, including by computer, any child pornography;

(2) Knowingly receives or distributes:

(A) Any child pornography by any means, including by computer; or

(B) Any material that contains child pornography by any means, including by computer;

(3) Knowingly:

(A) Reproduces any child pornography for distribution by any means, including by computer; or

(B) Advertises, promotes, presents, distributes or solicits by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains:

(i) An obscene visual depiction of a child engaging in sexually explicit conduct; or

(ii) A visual depiction of an actual child engaging in sexually explicit conduct;

(4) Knowingly sells or possesses with the intent to sell any child pornography;

(5) Knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk or any other material that contains an image of child pornography;

(6) Knowingly distributes, offers, sends, or provides to a child any visual depiction, including any photograph, film, video, picture or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, where such visual depiction is, or appears to be, of a child engaging in sexually explicit conduct for purposes of inducing or persuading a child to participate in any activity that is illegal; or

(7) Knowingly produces with intent to distribute, or distributes, by any means, including a computer child pornography that is an adapted or modified depiction of an identifiable child;

shall be guilty of a **felony.**

(b) It shall be an affirmative defense to a charge under subsections (a)(1)-(5) of this Section that:

1. The alleged child pornography was produced using an actual person or persons engaged in sexually explicit conduct, and each such person was an adult at the time the

material was produced; or

2. The alleged child pornography was not produced using any actual child or children.

(c) No affirmative defense under subsection (b) shall be available in any prosecution that involves child pornography as defined in Section 4-106(b)(3) of this Title.

(d) A defendant may not assert an affirmative defense under subsection (b) for any offense under this Section unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 14 days before the commencement of the trial, the defendant provides the Tribal Court with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense to a charge of violating this Section, or presenting any evidence for which the defendant has failed to provide proper and timely notice.

(e) It shall be an affirmative defense to a charge of violating subsection (a)(5) that the defendant:

(1) Possessed less than three (3) images of child pornography; and

(2) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof:

(A) Took reasonable steps to destroy each such image; or

(B) Reported the matter to a law enforcement agency and afforded that agency access to each such image.

(f) On motion of the Tribe, in any prosecution under this Section, except for good cause shown, the name, address, social security number or other nonphysical identifying information, other than the age or approximate age of any child who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the Tribe, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual child.

(g) Civil Remedies.

(1) In general. Any person aggrieved by reason of the conduct prohibited under subsection (a) may commence a civil action for the relief set forth in paragraph (2).

(2) Relief. In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including:

(A) Temporary, preliminary or permanent injunctive relief;

(B) Compensatory and punitive damages; and

(C) The costs of the civil action and reasonable fees for attorneys and expert witnesses.

4-1415. **Misleading Domain Names on the Internet**

(a) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a person into viewing material constituting obscenity shall be guilty of a **felony.**

(b) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a child into viewing material that is harmful to children on the Internet shall be guilty of a **felony.**

(c) For purposes of this Section, a domain name that includes a word or words to indicate the sexual content of a site, such as "sex" or "porn," is not misleading.

(d) For purposes of this Section, the phrase "material that is harmful to children" means any communication, consisting of nudity, sexually explicit conduct or excretion that, taken as a whole and with reference to its context:

1. Predominately appeals to a prurient interest of children;

2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for children; and

3. Lacks serious literary, artistic, political or scientific value for children.

4-1416. **Misleading Words or Digital Images on the Internet**

(a) Whoever knowingly embeds words or digital images into the source code of a website with the intent to deceive a person into viewing material constituting obscenity shall be guilty of a **felony.**

(b) Whoever knowingly embeds words or digital images into the source code of a website with the intent to deceive a child into viewing material harmful to children on the Internet shall be guilty of a **felony**.

(c) For the purposes of this section, a word or digital image that clearly indicates the sexual content of the site, such as "sex" or "porn," is not misleading.

(d) As used in this section, the phrase "material that is harmful to children" has the same meaning given to the phrase in Section 4-1415 of this Title.

(e) As used in this section, the term "source code" means the combination of text and other characters comprising the content, both viewable and nonviewable, of a web page, including

any website publishing language, programming language, protocol or functional content, as well as any successor languages or protocols.

4-1417. Aiding in the Commission of a Sex Offense.

Unless otherwise specifically covered by another Section of this Chapter, such as Promoting Prostitution and Facilitating Prostitution, or Chapter 3 of this Title, whoever:

(a) Knowingly transports any individual to or within the Reservation with intent that such individual engage in activity constituting a sex offense under this Chapter, or attempts to do so;

(b) Knowingly induces, persuades, entices or coerces any individual to engage in activity constituting a sex offense under this Chapter, or attempts to do so;

(c) Knowingly induces, persuades, entices or coerces any child to engage in activity which would constitute a sex offense if an adult had engaged in the activity;

Is guilty of Aiding in the Commission of a Sex Offense.

Aiding in the Commission of a Sex Offense is a felony.

4-1418. Use of Child's Information For Illicit Purposes.

Whoever knowingly uses the name, address, telephone number, social security number or electronic mail address of another individual, knowing that such other individual has not attained the age of 18 years, with the intent to entice, encourage, offer, or solicit any person to engage in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, is guilty of Use of Child's Information for Illicit Purposes.

Use of Child's Information for Illicit Purposes is a felony.

4-1419. Credibility or Conduct of the Complaining Witness

(a) In a prosecution for any sex offense under Chapter 14, opinion evidence, reputation evidence and evidence of specific instances of the complaining witness' sexual conduct or any of such evidence, is not admissible on behalf of the defendant to prove consent by the complaining witness where lack of consent is an element of the offense. This section shall not be applicable to evidence of the complaining witness' sexual conduct with the defendant.

(b) If evidence of sexual conduct of the complaining witness is to be offered to attack the credibility of the complaining witness, the defendant must file a written motion to the Court in at least 14 days advance of the trial, stating that the defense has an offer of proof of the relevancy of

evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness. The hearing on the motion will be prior to trial and outside the presence of the jury, if any.

CHAPTER 15. CRIMINAL GANGS AND GANG RELATED ACTIVITIES

4-1501. Gang Crime

Any person who commits a crime for the benefit of, at the direction of or in association with any criminal gang, with the intent to promote, further or assist in the affairs of a criminal gang or obtain membership into a criminal gang, is guilty of gang crime.

Gang crime is a Class A misdemeanor, unless the crime committed would otherwise be a felony, in which case Gang Crime is a felony.

4-1502. Participation In a Criminal Gang

Any person who is a participant, or participating, in a criminal gang as defined in this Title **shall be guilty of a felony.**

4-1503. Hiring, Engaging, or Using a Child To Participate In a Criminal Gang

Hiring, engaging or using a child for any conduct preparatory to or in furtherance of any offense committed by a criminal gang, **shall be guilty of a felony.**

4-1504. Drive By Shootings

Violation. Any person who of his or her own will is physically present in a vehicle used by or in a drive-by shooting as defined in this Title, shall be deemed **guilty of a felony**.

4-1505. Criminal Gang Related Congregations

Whenever a community, resource officer, security officer or law enforcement officer observes a person whom he or she reasonably believes to be a criminal gang member loitering in any public place with one or more other persons, he or she shall order all such persons to disperse and remove themselves from the area. Any person who does not promptly obey such an order is in violation of this section. Violation of this section is a Class A misdemeanor.

4-1506. **Evidence and Limitations on Penalties.**

For the prosecution and/or sentencing of any offense in this Chapter, the following provisions shall apply:

Evidence. Evidence concerning indicia of gang membership including, but not limited to, possession of gang-related paraphernalia, gang-related tattoos or gang-related clothing may be offered, with proper foundation therefore, for submission into evidence in any case brought under this Chapter.

4-1507. **Criminal Gang Activity and Forfeiture**

(a) Any firearm, paintball gun, BB or pellet gun, ammunition to be used in a firearm or deadly weapon in the possession of a member of a criminal gang as defined in this Title may be seized by any law enforcement agency or peace officer when the law enforcement agency or peace officer reasonably believes that the firearm or deadly weapon is or will be used in the commission of criminal activity.

(b) The tribal prosecutor or presenting officer shall initiate, in a civil action, forfeiture proceedings by petition in the Tribal Court as to any property seized pursuant to the provisions of this Section within 90 days of seizure.

(c) The tribal prosecutor or presenting officer shall provide notice of the filing of the petition to those members of the gang who become known to law enforcement officials as a result of the seizure and related arrests, and to any person deemed by law enforcement officials to be the owner of any property involved. After initial notice of the filing of the petition, the court shall assure that all persons so notified continue to receive notice of all subsequent proceedings related to the property.

(d) Any person who claims an interest in any seized property shall, in order to assert a claim that the property should not be forfeited, file a notice with the court, without the necessity of paying costs, of the intent to establish either of the following:

(1) That the persons asserting the claim did not know, and could not have known, of its use in the commission of a pattern of criminal gang activity;

(2) The person alleges the property interest was acquired by or in possession of criminal gang members through theft, burglary or other unlawful means; or

(3) That the law enforcement officer lacked the requisite reasonable belief that the property was or would be used in the commission of a pattern of criminal gang activity.

4-1508. **Juvenile Gatherings**

(a) Any private place or premises within the boundaries of the Standing Rock Sioux Tribe that is used as the site of a juvenile gathering is hereby declared to be a public nuisance. No person shall maintain such a nuisance. Whenever such a nuisance is found to exist within the boundaries of the Standing Rock Sioux Tribe Reservation, the law enforcement service of the Standing Rock Sioux Tribe shall give the person(s) responsible for the juvenile gathering notice to abate the nuisance.

(b) The definitions in this Section govern the construction of this Section unless the context otherwise requires. In the case of any conflict and any other section of this Code, this Section's definitions shall control.

(1) **Juvenile Gathering.** A juvenile gathering is any assemblage where three (3) or more persons under the age of 21 are present for a social occasion or a social activity and controlled substances or alcoholic beverages are possessed or consumed by any person under the age of 21.

(2) **Person(s) responsible for a gathering.** The person(s) responsible for a juvenile gathering is/are the person(s) who owns, rents, leases or otherwise controls the premises at which the juvenile gathering takes place, the person(s) in charge of the premises, and/or the person(s) who organized the gathering. When the person who controls the property or organized the juvenile gathering rents or leases the premises on when the persons attending the juvenile gathering are not lawfully on the premises, the owner of the premises shall not be the person responsible for the juvenile gathering unless the juvenile gathering occurred with the owner's knowledge.

4-1509. **Premises Used By Criminal Gang; Nuisances, Actions for Injunction and Other Damages, and Other Remedies for Unlawful Use; Exceptions.**

(a) Every private building or place used by members of a criminal gang for the commission of criminal gang activity is a nuisance and may be the subject of an injunction or cause of action for damages as provided for in this Chapter.

(b) Any person may file a petition for injunctive relief with the appropriate court seeking eviction from or closure of any premises used for commission of criminal activity by a criminal gang. Upon proof by the plaintiff that the premises are being used by members of a criminal gang for the commission of criminal gang activity, the court may order the owner of record of the

premises to remove or evict the persons from the premises and order the premises sealed, prohibit further use of the premises or enter such order as may be necessary to prohibit the premises from being used for the commission of criminal gang activity.

(c) Any action for injunction, damages or other relief filed pursuant to this Section shall proceed according to the provisions of the Standing Rock Sioux Tribal Code of Justice.

(d) The court shall not issue an injunction or assess a civil penalty against any owner of record unless that person knew or should have known or had been notified of the use of the premises for criminal gang activity. Any injunctive relief other than that specifically authorized in Subsection (b) of this Section shall be limited to that which is necessary to protect the health and safety of the residents or the public or that which is necessary to prevent further criminal activity.

(e) When the court has previously issued injunctive relief ordering the owner of record of the premises to close the premises or otherwise to keep the premises from being used for the commission of criminal gang activity, the court, upon proof that the owner of record has failed to comply with the terms of the injunction and that the premises continue to be used for the commission of a gang activity, may do one or more of the following:

(1) Order the premises demolished and cleared at the cost of the owner;

(2) Order the premises sold at public auction with the proceeds from the sale, less the costs of the sale and the expenses of bringing the action, delivered to the owner;

(3) Order the owner of record to pay damages to persons or local governing authorities who have been damaged or injured or have incurred expense as a result of the owner's failure to take reasonable steps or precautions to comply with the terms of any injunction issued pursuant to the provisions of this Chapter; or

(4) Assess a civil penalty not to exceed five thousand dollars ($5,000) against the defendant based upon the severity of the nuisance and its duration. In establishing the amount of any civil penalty, the court shall consider all of the following factors:

(i) The actions taken by the defendant to mitigate or correct the problem at the private building or place or the reasons why no such action was taken; and

(ii) Any other factor deemed by the court to be relevant.

4-1510. Other Remedies.

Nothing in this Chapter shall preclude any aggrieved person from seeking any other remedy provided by law.

CHAPTER 16. SEX OFFENDER REGISTRATION AND NOTIFICATION REQUIREMENTS

SUBCHAPTER A. GENERAL MATTERS

4-1601. Title

This Chapter shall be known as the Standing Rock Sioux Tribe Sex Offender Registration and Notification Chapter.

4-1602. Purpose

The intent of this Chapter is to implement the Federal Sex Offender Registration and Notification Act (SORNA) (Title I of the Adam Walsh Act, Public Law 109-248) and shall be interpreted liberally to comply with the terms and conditions of SORNA as presently written or hereafter amended.

4-1603. Creation of Registries

A. **National Sex Offender Registry** – There is hereby established a sex offender registry, which the Standing Rock Sioux Tribal Court shall maintain and operate pursuant to the provisions of this Chapter, as amended. Access to the sex offender registry shall be restricted to those designated Tribal Court personnel authorized by the Court to maintain the registry. The sex offender registry is designed in part to facilitate the immediate exchange of sex offender information among other jurisdictions.

B. **Standing Rock Public Sex Offender Registry Website** – There is hereby established a public sex offender registry website, which shall be known as the "Standing Rock Public Sex Offender Registry (SRPSOR) Website" and which the Standing Rock Sioux Tribal Court shall maintain and operate pursuant to the provisions of this Chapter, or as may be amended. The SRPSOR Website is designed in part to allow public access through the internet to sex offender information and provide the community with notification of sex offenders residing within the community as set forth in Chapter 4, Section 1638, herein. The Tribe's registry site can be accessed at the following address: http://srst.nsopw.gov. In addition, the SRPSOR will provide the public with information to allow access to other registry sites where non-Indian offenders are located and who may reside within the reservation.

4-1604. Definitions

The following are definitions that will apply to this Chapter 16, only:

A. **Convicted** – An adult sex offender is "convicted" for the purposes of this Chapter if the sex offender has been subjected to penal consequences based on the conviction, however the conviction may be styled. A juvenile offender is "convicted" for purposes of this Chapter if the juvenile offender is either:

(1) Prosecuted and found guilty as an adult for a sex offense; or

(2) Is adjudicated delinquent as a juvenile for a sex offense, but only if the juvenile offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse as described in Title 18, U.S.C. § 2241, or is an offense listed in Section 4-1609(e) of this Title, or was an attempt or conspiracy to commit such offenses, provided the adjudicated juvenile offender was represented by a licensed attorney.

B. **Foreign Convictions** – A foreign conviction is one obtained outside of the United States.

C. **Employee** – the term "employee" as used in this Chapter includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation. Volunteers of a tribal agency or organization are included within the definition of employee for registration purposes.

D. **Immediate** – "Immediate" and "immediately" means within three (3) Tribal Court business days.

E. **Imprisonment** – The term "imprisonment" refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state "prison" as well as in a federal, military, foreign, BIA, private or contract facility, or a local or tribal "jail." Persons under "house arrest" following conviction of a sex offense are required to register pursuant to the provisions of this Chapter during their period of "house arrest."

F. **Indian** – Indian status shall be determined in accordance with prevailing federal law as it applies within the jurisdiction of the United States Court of Appeals for the 8th Circuit. In addition, Indian status shall include members of the First Nations of Canada, i.e., Canadian Indians.

G. **Jurisdiction** - The term "jurisdiction" as used in this Chapter refers to the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth

of the Northern Mariana Islands, the United States Virgin Islands and any Indian tribe.

H. **National Sex Offender Registry (NSOR)** – The national database maintained by the Attorney General of the United States pursuant to 42 U.S.C. § 16919.

I. **Resides** – The term "reside" or "resides" means with respect to an individual, the location of the individual's home or other place where the individual habitually lives or sleeps.

J. **Sex Offense** – The term "sex offense" as used in this Chapter includes those offenses contained in 42 U.S.C. § 16911(5) and those offenses enumerated in Section 4-1606 of this Chapter or any other covered offense under tribal law. An offense involving consensual sexual conduct is not a sex offense for the purposes of this Chapter if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than four (4) years older than the victim.

K. **Sex Offender** – A person convicted of a sex offense is a "sex offender."

L. **Sexual Act** – The term "sexual act" means:

(1) Contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;

(2) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(3) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(4) The intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of 18 years old with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

M. **Sexual Contact** – 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 desires of another person.

N. **Student** – A person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, or an institution of higher education.

O. **SORNA** – The Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006 P.L. 109-248), 42 U.S.C. § 16911 *et seq.*, as amended.

P. **Sex Offender Registry** – Means the Standing Rock Public Sex Offender Registry (SRPSOR) Website, the Registry of Sex Offenders and a Notification Program which the Standing Rock Sioux Tribal Court shall maintain and operate pursuant to the provisions of this Chapter, or as may be amended.

Q. **SMART Office** – The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. § 16945.

R. **Dru Sjodin National Sex Offender Public Website (NSOPW)** – The public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. § 16920.

S. **Tier 1 Sex Offender** – A "tier 1 sex offender," or a "sex offender" designated as "tier 1," is one that has been convicted of a "tier 1" sex offense as defined in Section 4-1607 of this Title.

T. **Tier 2 Sex Offender** – A "tier 2 sex offender," or a "sex offender" designated as "tier 2," is one that has been either convicted of a "tier 2" sex offense as defined in Section 4-1608 of this Title, or who is subject to the recidivist provisions of Section 4-1608(a) of this Title.

U. **Tier 3 Sex Offender** – A "tier 3 sex offender," or a "sex offender" designated as "tier 3," is one that has been either convicted of a "tier 3" sex offense as defined in Section 4-1609 of this Title, or who is subject to the recidivist provisions of Section 4-1609(a) of this Title.

SUBCHAPTER B.
COVERED OFFENDERS
&
COVERED OFFENSES

4-1605. Covered Offenders

Sex Offenders subject to the provisions of this Chapter are not limited to offenders who have been convicted or sentenced by the Standing Rock Tribal Court. Sex Offenders convicted, sentenced and required to register as a sex offender in federal or state court also are subject to the provisions of this Chapter, if the sex offender meets any of the conditions set forth below. In addition, offenders subject to registration under this Chapter are not limited to Tribal members or Indians in general. The following sex offenders, which include all sex offenders who have been convicted, sentenced and required to register as a sex offender by the tribal court, federal court or state court for a sex offense, MUST register with the Tribe:

(1) Indians who reside within the exterior boundaries of the Tribe or otherwise reside on property

owned by the Tribe in fee or trust regardless of location;

(2) Offenders employed within the exterior boundaries of the Tribe or on property owned by the Tribe in fee or trust regardless of location; and

(3) Offenders who attend school within the exterior boundaries of the Tribe or on property owned by the Tribe in fee or trust regardless of location.

If a sex offender is convicted of any of the following offenses, or convicted of an attempt or conspiracy to commit any of the following offenses, that sex offender is subject to the provisions of this Chapter and the requirements of the Standing Rock Sioux Tribe's Offender Registration Procedures Manual.

4-1606. Covered Offenses

A. **Tribal Offenses** – A conviction for any of the following crimes under the Standing Rock Sioux Tribe Code of Justice (SRST, COJ):

(1) SRST, COJ § 4-1401 (rape);

(2) SRST, COJ § 4-1402 (statutory rape);

(3) SRST, COJ § 4-1405 (sexual assault);

(4) SRST, COJ § 4-1406 (incest);

(5) SRST, COJ § 4-1204(1)(d) (child abuse by sexual assault, molestation or exploitation);

(6) SRST, COJ § 4-301 (complicity in the commission of any of the foregoing offenses);

(7) SRST, COJ § 4-505 (Non-parental Kidnapping of a Child);

(8) SRST, COJ § 4-1407 (Sex Trafficking);

(9) SRST, COJ § 4-1408 (Video Voyeurism);

(10) SRST, COJ § 4-1409 (Crossing Reservation Lines With Intent to Engage in Sexual Act with Child Who Has Not Yet Reached 13 Years of Age);

(11) SRST, COJ § 4-1410 (Sexual Abuse of a Ward);

(12) SRST, COJ § 4-1411 (Sexual Exploitation of Children);

(13) SRST, COJ § 4-1412 (Selling or Buying Children);

(14) SRST, COJ § 4-1413 (Certain Activities Relating to Materials Involving the Sexual Exploitation of Children);

(15) SRST, COJ § 4-1414 (Certain Activities Relating to Materials Constituting Child Pornography);

(16) SRST, COJ § 4-1415 (Misleading Domain Names on the Internet);

(17) SRST, COJ § 4-1416 (Misleading Words or Digital Images on the Internet);

(18) SRST, COJ § 4-1417 (Aiding in the Commission of a Sex Offense); and/or

(19)SRST, COJ § 4-1418 (Use of Child's Information for Illicit Purposes.

A pardon granted by the Tribe as to any of the foregoing offenses shall not terminate or modify the requirements of registration otherwise imposed by this Chapter.

B. **Federal Offenses** – A conviction for any of the following, and any other offenses hereafter included in the definition of "sex offense" at 42 U.S.C. § 16911(5):

(1) 18 U.S.C. § 1591 (sex trafficking of children);

(2) 18 U.S.C. § 1801 (video voyeurism of a minor);

(3) 18 U.S.C. § 2241 (aggravated sexual abuse);

(4) 18 U.S.C. § 2242 (sexual abuse);

(5) 18 U.S.C. § 2243 (sexual abuse of a minor or ward);

(6) 18 U.S.C. § 2244 (abusive sexual contact);

(7) 18 U.S.C. § 2245 (offenses resulting in death);

(8) 18 U.S.C. § 2251 (sexual exploitation of children);

(9) 18 U.S.C. § 2251A (selling or buying of children);

(10) 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor);

(11) 18 U.S.C. § 2252A (material containing child pornography);

(12) 18 U.S.C. § 2252B (misleading domain names on the internet);

(13) 18 U.S.C. § 2252C (misleading words or digital images on the internet);

(14) 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the U.S.);

(15) 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity);

(16) 18 U.S.C. § 2422 (coercion and enticement of a minor for illegal sexual activity);

(17) 18 U.S.C. § 2423 (Transportation of Minors for Illegal Sexual Activity, Travel With the Intent to Engage in Illicit Sexual Conduct with a Minor, Engaging in Illicit Sexual Conduct in Foreign Places);

(18) 18 U.S.C. § 2424 (failure to file factual statement about an alien individual); and/or

(19) 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).

C. **Foreign Offenses** – Any conviction for a sex offense involving any conduct listed in this Section that was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand or under the laws of any foreign country when the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

D. **Military Offenses** – Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. 951 note).

E. **Juvenile Offenses or Adjudications** – Any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. § 2241) or those offenses listed in Section 4-1609(e) of this Title and committed by a child who is 14 years of age or older at the time of the offense. This includes engaging in a sexual act with another by force or the threat of serious violence, or engaging in a

sexual act with another by rendering unconscious or involuntarily drugging the victim. Adjudications of delinquency by children 14 years of age or older of offenses listed in subsection A above shall be Tiered as set forth in Sections 4-1607(c), 4-1608(b) and 4-1609(e) of this Title. Tier 1 and Tier 2 offenses are exempt from all registration requirements. Adjudication of delinquency by children 14 years of age or older of any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse (18 U.S.C. 2241) and Section 4-1609(e) of this Title shall be subject to registration requirements and included in the NSOR, but exempt from inclusion in the SRPSOR.

F. **Jurisdiction Offenses** – Any sex offense committed in any jurisdiction - including this Tribe, any State, or any other Tribe - that involves:

(1) Any type or degree of genital, oral, or anal penetration;

(2) Any sexual touching of or sexual contact with a person's body, either directly or through the clothing;

(3) Kidnapping of a child;

(4) False imprisonment of a child;

(5) Solicitation to engage a child in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a child to engage in sexual conduct;

(6) Use of a child in a sexual performance;

(7) Solicitation of a child to practice prostitution;

(8) Possession, production, or distribution of child pornography;

(9) Criminal sexual conduct that involves physical contact with a child or the use of the internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a child at the time of the offense;

(10) Any conduct that by its nature is a sex offense against a child; or

(11) Any offense similar to those outlined in:

a. 18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion);

b. 18 U.S.C. § 1801 (video voyeurism of a minor);

c. 18 U.S.C. § 2241 (aggravated sexual abuse);

d. 18 U.S.C. § 2242 (sexual abuse);

e. 18 U.S.C. § 2244 (abusive sexual contact);

f. 18 U.S.C. § 2422(b) (coercing a minor to engage in prostitution); or

g. 18 U.S.C. § 2423(a) (transporting a minor to engage in illicit conduct).

G. **Tier Levels for State Offenses** – Any offender coming into the jurisdiction of the Tribe who is required to register for an offense in a state, and thus required to register with the Tribe, shall receive the same Tier designation as received by the state, and shall register with the same Tier level designation.

SUBCHAPTER C. TIERED OFFENSES

4-1607. Tier 1 Offenses

A. **Sex Offenses** – A "Tier 1" offense includes any sex offense for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that is not a "Tier 2" or "Tier 3" offense.

B. **Offenses Involving a Child** – A "Tier 1" offense also includes any offense for which a person has been convicted by any jurisdiction, local government or qualifying foreign country pursuant to Section 4-1606 of this Title that involves the false imprisonment of a child, video voyeurism of a child, or possession or receipt of child pornography.

C. **Tribal Offenses** – Incest as defined in Section 4-1406 of this Title; complicity in the commission of rape, statutory rape, sexual assault, child abuse by sexual assault as provided for in Section 4-301 of this Title; and/or any offenses provided for in subsection (D) of this Section.

D. **Certain Federal and Tribal Offenses** – Conviction for any of the following federal offenses, and/or of a Tribal offense for the same acts underlying the federal offenses, shall be considered a conviction for a "Tier 1" offense:

(1) 18 U.S.C. § 1801 (video voyeurism of a minor);

(2) 18 U.S.C. § 2252 (receipt or possession of child pornography);

(3) 18 U.S.C. § 2252A (receipt or possession of child pornography);

(4) 18 U.S.C. § 2252B (misleading domain names on the internet);

(5) 18 U.S.C. § 2252C (misleading words or digital images on the internet);

(6) 18 U.S.C. § 2422(a) (coercion to engage in prostitution);

(7) 18 U.S.C. § 2423 (b) (travel with the intent to engage in illicit conduct);

(8) 18 U.S.C. § 2423(c) (engaging in illicit conduct in foreign places);

(9) 18 U.S.C. § 2423(d) (arranging, inducing procuring or facilitating the travel in interstate commerce of an adult for the purpose of engaging in illicit conduct for financial gain);

(10) 18 U.S.C. § 2424 (failure to file factual statement about an alien individual); or

(11) 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).

E. **Certain Military Offenses** – Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note) that is similar to those offenses outlined in Section 3.01(A), (B), or (C) shall be considered a "Tier 1" offense.

4-1608. Tier 2 Offenses

A. **Recidivism and Felonies** – Unless otherwise covered by Section 4-1607 of this Title, any sex offense that is not the first sex offense for which a person has been convicted and that is punishable by more than one (1) year in jail is considered a "Tier 2" offense.

B. **Tribal Offenses** – Sexual Assault as defined in Section 4-1405of this Title, Statutory Rape as defined in Section 4-1402 of this Title, and/or any offenses provided for in subsection (D) of this Section.

C. **Offenses Involving a Child** – A "Tier 2" offense includes any sex offense against a child for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that involves:

(1) The use of a child in prostitution, including solicitations;

(2) Enticing a child to engage in criminal sexual activity;

(3) A non-forcible Sexual Act with a child 16-17 years old;

(4) Sexual contact with a child 13 years of age or older, whether directly or indirectly through the clothing, that involves the intimate parts of the body;

(5) The use of a child in a sexual performance; or

(6) The production or distribution of child pornography.

D. **Certain Federal and Tribal Offenses** – Conviction for any of the following federal offenses, and/or of a Tribal offense for the same acts underlying the federal offenses, shall be considered a conviction for a "Tier 2" offense:

(1) 18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion);

(2) 18 U.S.C. § 2244 (Abusive sexual contact, where the victim is 13 years of age or older);

(3) 18 U.S.C. § 2251 (sexual exploitation of children);

(4) 18 U.S.C. § 2251A (selling or buying of children);

(5) 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor);

(6) 18 U.S.C. § 2252A (production or distribution of material containing child pornography);

(7) 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the United States);

(8) 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity);

(9) 18 U.S.C. § 2422(b) (coercing a minor to engage in prostitution);

(10) 18 U.S.C. § 2423(a) (transporting a minor to engage in illicit conduct); or

(11) 18 U.S.C. § 2423(d) (arranging, inducing procuring or facilitating the travel in interstate commerce of a minor for the purpose of engaging in illicit conduct for financial gain).

E. **Certain Military Offenses** – Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note) that is similar to those offenses outlined in Sections 4-1608(A), (B), or (C) of this Title shall be considered a "Tier 2" offense.

4-1609. Tier 3 Offenses

A. **Recidivism and Felonies** – Any sex offense that is punishable by more than one (1) year in jail where the offender has at least one (1) prior conviction for a Tier 2 sex offense, or has previously become a Tier 2 sex offender, is a "Tier 3" offense.

B. **General Offenses** – A "Tier 3" offense includes any sex offense for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that involves:

(1) Non-parental kidnapping of a child;

(2) A sexual act with another by force or threat;

(3) A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate; or

(4) Sexual contact with a child 12 years of age or younger, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing.

C. **Certain Federal and Tribal Offenses** – Conviction for any of the following federal offenses, and/or of a Tribal offense for the same acts underlying the federal offenses, shall be considered conviction for a "Tier 3" offense:

(1) 18 U.S.C. § 2241 (aggravated sexual abuse);

(2) 18 U.S.C. § 2242 (sexual abuse);

(3) 18 U.S.C. § 2243 (sexual abuse of a minor or ward); or

(4) Where the victim is 12 years of age or younger, 18 U.S.C. § 2244 (abusive sexual contact).

D. **Certain Military Offenses** – Any military offense specified by the Secretary of Defense under

section 115(a)(8)(C)(i) of Public Law 105-119 (codified a 10 U.S.C. § 951 note) that is similar to those offenses outlined in Section 4-1609(A), (B), or (C) of this Title shall be considered a "Tier 3" offense.

E. **Tribal Offenses** – Child abuse by sexual assault, molestation or exploitation as defined in Section 4-1204(1)(d) of this Title, Rape as defined in Section 4-1401 of this Title, and Non-parental Kidnapping of a Child as defined in Section 4-505 of this Title and/or any offenses provided for in subsection (D) of this Section, are considered "Tier 3" offenses.

SUBCHAPTER D. REQUIRED REGISTRATION INFORMATION

4-1610. General Requirements

A. **Duties** – A sex offender covered by this Chapter who is required to register with the Tribe pursuant to Section 4-1631 shall provide all of the information detailed in this Chapter to the Standing Rock Sioux Tribal Court, and the Standing Rock Sioux Tribal Court shall obtain all of the information detailed in this Chapter from sex offenders who are required to register with the Tribe in accordance with this Chapter and shall implement any relevant policies and procedures.

B. **Digitization** – All information obtained under this Chapter shall be, at a minimum, maintained by the Standing Rock Sioux Tribal Court in a digitized format.

C. **Electronic Database** – A sex offender registry shall be maintained in an electronic database by the Standing Rock Sioux Tribal Court and shall be in a form capable of electronic transmission.

4-1611. Criminal History

Criminal History – The Standing Rock Sioux Tribal Court shall obtain, and a sex offender shall provide, the following information related to the sex offender's criminal history:

(1) The date of all arrests;

(2) The date of all convictions;

(3) The sex offender's status of parole, probation, or supervised release;

(4) The sex offender's registration status; and

(5) Any outstanding arrest warrants.

4-1612. Date of Birth

Date of Birth – The Standing Rock Sioux Tribal Court shall obtain, and a sex offender shall provide, the following information related to the sex offender's date of birth:

(1) The sex offender's actual date of birth; and

(2) Any other date of birth used by the sex offender.

4-1613. DNA Sample

A. **DNA** – If the sex offender's DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide the Standing Rock Sioux Tribal Court a sample of his DNA.

B. **CODIS** – Any DNA sample obtained from a sex offender shall be submitted to an appropriate lab for analysis and entry of the resulting DNA profile in to CODIS. If the sex offender is an Indian, the DNA profile will be submitted by Tribal Court to the North Dakota or South Dakota crime lab to be forwarded to CODIS, as agreed upon through Agreements entered into between the Tribe and the above States.

C. **DNA Repository** – The State of North Dakota and the State of South Dakota shall be the repositories of all DNA samples required to be stored pursuant to the provisions of this Chapter as agreed upon through Agreements entered into between the Tribe and the above States.

4-1614. Driver's Licenses, Identification Cards, Passports, and Immigration Documents

A. **Driver's License** – The Standing Rock Sioux Tribal Court shall obtain, and a sex offender shall provide, a photocopy of all of the sex offender's valid driver's licenses issued by any jurisdiction.

B. **Identification Cards** – The Standing Rock Sioux Tribal Court shall obtain, and a sex offender shall provide, a photocopy of any identification card including the sex offender's tribal enrollment card issued by any jurisdiction.

C. **Passports** – The Standing Rock Sioux Tribal Court shall obtain, and a covered sex offender shall provide, a photocopy of any passports used by the sex offender.

D. **Immigration Documents** – The Standing Rock Sioux Tribal Court shall obtain, and a sex offender shall provide, a photocopy of any and all immigration documents.

4-1615. Employment Information

A. **Employment** – The Standing Rock Sioux Tribal Court shall obtain, and a sex offender shall provide, the following information related to the sex offender's employment, to include any and all places where the sex offender is employed in any means including volunteer and unpaid positions:

(1) The name of the sex offender's employer;

(2) The address of the sex offender's employer; and

(3) Similar information related to any transfer or day labor employment.

4-1616. Finger and Palm Prints

A. **Finger and Palm Prints** – The Standing Rock Sioux Tribal Court shall obtain and the sex offender shall provide both finger prints and palm prints of the sex offender in a digitized format.

B. **IAFIS** – If the sex offender is an Indian, the finger print and palm print will be submitted to the state of North Dakota or South Dakota by the Tribal Court for submission to IAFIS.

4-1617. Internet Identifiers

A. **Internet Names** – The Standing Rock Sioux Tribal Court shall obtain, and a sex offender shall provide, the following information related to the sex offender's internet related activity:

(1) Any and all email addresses used by the sex offender;

(2) Any and all Instant Message addresses and identifiers;

(3) Any and all other designations or monikers used for self-identification in internet communications or postings; and

(4) Any and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings.

4-1618. Name

A. **Name** – The Standing Rock Sioux Tribal Court shall obtain and a sex offender shall provide, the following information related to the sex offender's name:

(1) The sex offender's full primary given name;

(2) Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used; and

(3) Any and all ethnic or tribal names by which the sex offender is commonly known. This does not include any religious or sacred names not otherwise commonly known.

4-1619. Phone Numbers

A. **Phone Numbers** – The Standing Rock Sioux Tribal Court shall obtain, and a sex offender shall provide, the following information related to the sex offender's telephone numbers:

(1) Any and all land line telephone numbers; and

(2) Any and all cellular telephone numbers.

4-1620. Picture

A. **Photograph** – The Standing Rock Sioux Tribal Court shall obtain, and a sex offender shall provide, a current photograph of the sex offender.

B. **Update Requirements** – Unless the appearance of a sex offender has not changed significantly, a digitized photograph shall be collected:

(1) Every 90 days for Tier 3 sex offenders;

(2) Every 180 days for Tier 2 sex offenders; and

(3) Every year for Tier 1 sex offenders.

4-1621. Physical Description

A. **Physical Description** – The Standing Rock Sioux Tribal Court shall obtain, and a sex offender shall provide, an accurate description of the sex offender as follows:

(1) A physical description;

(2) A general description of the sex offender's physical appearance or characteristics; and

(3) Any identifying marks, such as, but not limited to, scars, moles, birthmarks or tattoos.

4-1622. Professional Licensing Information

A. **Professional Licenses** – The Standing Rock Sioux Tribal Court shall obtain, and a sex offender shall provide, all licenses of the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business.

4-1623. Residence Address

A. **Address** – The Standing Rock Sioux Tribal Court shall obtain, and a sex offender shall provide, the following information related to the sex offender's residence:

(1) The address of each residence at which the sex offender resides or will reside; and

(2) Any location or description that identifies where the sex offender habitually resides regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address.

4-1624. School

A. **School Location** – The Standing Rock Sioux Tribal Court shall obtain, and a sex offender shall provide, the following information related to the sex offender's school:

(1) The address of each school where the sex offender is or will be a student; and

(2) The name of each school where the sex offender is or will be a student.

4-1625. Social Security Number

A. **Social Security** – The Standing Rock Sioux Tribal Court shall obtain, and a sex offender shall provide, the following information:

(1) A valid social security number for the sex offender; and

(2) Any social security number the sex offender has used in the past, valid or otherwise.

4-1626. Temporary Lodging

A. **Lodging Information** – The Standing Rock Sioux Tribal Court shall obtain, and a sex offender shall provide, the following information when the sex offender will be absent from his residence for seven (7) days or more:

(1) Identifying information of the temporary lodging locations including addresses and names; and

(2) The dates the sex offender will be staying at each temporary lodging location.

(3) Travel Abroad. In the event the sex offender will be traveling outside of the United States for more than seven (7) days, the Standing Rock Sioux Tribal Court shall immediately provide this information to INTERPOL.

a. Sex offenders must inform their residence jurisdictions 21 days in advance if they intend to travel outside of the United States. Jurisdictions must notify the U.S. Marshals Serve and immediately notify any other jurisdiction where the sex offender is either registered, or is required to register, of that updated information. Update also must be made to NCIC/NSOR.

4-1627. Offense Information

A. **Offense Information** – The Standing Rock Sioux Tribal Court shall obtain the text of each provision of law defining the criminal offense(s) for which the sex offender is registered.

4-1628. Vehicle Information

A. **Detailed Information** – The Standing Rock Sioux Tribal Court shall obtain, and a sex offender

shall provide, the following information related to all vehicles owned or operated by the sex offender for work or personal use including land vehicles, aircraft and watercraft:

(1) License plate numbers;

(2) Registration numbers or identifiers;

(3) General description of the vehicle to include color, make, model, and year; and

(4) Any permanent or frequent location where any applicable vehicle is kept.

4-1629. Frequency, Duration and Reduction

A. **Frequency** – A sex offender who is required to register shall, at minimum, appear in person at the Standing Rock Sioux Tribal Court for purposes of verification and keeping their registration current in accordance with the following time frames:

(1) For "Tier 1" offenders, once every year for 15 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.

(2) For "Tier 2" offenders, once every 180 days for 25 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.

(3) For "Tier 3" offenders, once every 90 days for the rest of their lives.

B. **Reduction of Registration Period** – A sex offender may have their period of registration reduced for a Tribal Court offense as follows:

(1) A Tier 1 offender may have his or her period of registration reduced to 10 years if he or she has maintained a clean record for 10 consecutive years;

(2) A Tier 2 offender may have his or her period of registration reduced to 15 years if he or she has maintained a clean record for 15 consecutive years; and

(3) A Tier 3 offender may have his or her period of registration reduced to 25 years if he or she was adjudicated delinquent of an offense as a juvenile that required Tier 3

registration and he or she has maintained a clean record for 25 consecutive years.

C. **Clean Record** – For purposes of Section 4-1629 of this Title a person has a clean record if:

(1) He or she has not been convicted of any offense, for which imprisonment for more than six (6) months may be imposed;

(2) He or she has not been convicted of any sex offense;

(3) He or she has successfully completed, without revocation, any period of supervised release, probation or parole; and

(4) He or she has successfully completed an appropriate sex offender treatment program certified by the tribe, another jurisdiction, or by the Attorney General of the United States.

D. **Increased Registration Requirements**

(1) **Statement of Necessity** – The sentencing authority of the Standing Rock Sioux Tribal Court is limited to one (1) year by the Indian Civil Rights Act, 25 U.S.C. § 1302(7). The denomination of offenses as Tier 1 offenses under this Code and the Sex Offender Registration and Notification Act (SORNA) does not adequately reflect the danger to individuals and to the community which this Code and said Act are intended to protect. Pursuant to SORNA § 112z(b), the Attorney General of the United States is directed to and has issued The National Guidelines for Sex Offender Registration and Notification, Final Guidelines, June 2008, which provide for the authority of sentencing jurisdictions to require enhanced registration requirements.

(2) **Enhancement of Registration Requirements** – At the time of sentencing or hearing for recapture for any offense subject to the registration requirements of this Code, the judge shall determine whether the offender shall register subject to the requirements of Tier 1, Tier 2 or Tier 3, and shall so order as part and parcel of sentence. In so determining, the judge shall consider such factors as reflect the offender's risk to the public, including, but not limited to the seriousness of the offense or offenses, the risk of recidivism and the danger to any individual or the community. The order and judgment of sentence shall state with particularity the factors considered by the judge and the adjudicated facts upon which the determination is based, with sufficient particularity to allow for review on appeal.

4-1630. Requirements for In Person Appearances

A. **Photographs** – At each in person verification, the sex offender shall permit the Standing Rock Sioux Tribal Court to take a photograph of the offender.

B. **Review of Information** – At each in person verification the sex offender shall review existing information for accuracy.

C. **Notification** – If any new information or change in information is obtained at an in person verification, the Standing Rock Sioux Tribal Court shall immediately notify all other jurisdictions in which the sex offender is required to register of the information or change in information.

SUBCHAPTER E. REGISTRATION

4-1631. Where Registration is Required

A. **Jurisdiction of Conviction** – A sex offender must initially register with the Standing Rock Sioux Tribal Court if the sex offender was convicted by the Tribal Court of a sex offense regardless of the sex offender's actual or intended residency.

B. **Jurisdiction of Incarceration** – A sex offender must register with the Standing Rock Sioux Tribal Court if the sex offender is incarcerated by the Tribe while completing any sentence for a sex offense, regardless of whether it is the same jurisdiction as the jurisdiction of conviction or residence.

C. **Jurisdiction of Residence** – A sex offender must register with the Standing Rock Sioux Tribal Court if the sex offender is an Indian and resides within the exterior boundaries of the Standing Rock Sioux Indian Reservation. If the sex offender is a non-Indian and resides within the exterior boundaries of the reservation, the sex offender must register in the county where he/she resides within the reservation.

D. **Jurisdiction of Employment** – A sex offender must register with the Standing Rock Sioux Tribal Court if he or she is employed by the Tribe in any capacity, or otherwise is employed within lands subject to the jurisdiction of the Tribe.

E. **Jurisdiction of School Attendance** – A sex offender must register with the Standing Rock Sioux Tribal Court if the sex offender is a student in any capacity within lands subject to the jurisdiction of the Tribe.

4-1632. **Timing of Registration**

A. **Timing** – A sex offender required to register with the Tribe under this Chapter shall do so in the following timeframe:

(1) If convicted by the Standing Rock Sioux Tribal Court for a sex offense and incarcerated, the sex offender must register before being released from incarceration;

(2) If convicted by the Standing Rock Sioux Tribal Court but not incarcerated, the sex offender must register within three (3) Tribal Court business days of sentencing for the registration offense; and

(3) Within three (3) Tribal Court business days of establishing a residence, commencing employment, or becoming a student within the exterior boundaries of the Standing Rock Sioux Reservation, a sex offender must appear in person to register with the Standing Rock Sioux Tribal Court.

B. **Duties of the Standing Rock Sioux Tribal Court** – The Standing Rock Sioux Tribal Court shall have policies and procedures in place to ensure the following:

(1) That any sex offender incarcerated or sentenced by the tribe for a sex offense completes their initial registration with the tribe;

(2) That the sex offender reads, or has read to them, and signs a form stating that the duty to register has been explained to them and that the sex offender understands the registration requirement;

(3) That the sex offender is registered; and

(4) That upon entry of the sex offender's information in to the registry, that information is immediately forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment or student status.

(5) That personnel of the Tribal Court will conduct compliance and monitoring checks during the offender's registration period, to include verification of residency, employment and school.

i. A Tier I offender shall have compliance and monitoring checks every six (6) months;

ii. A Tier II offender shall have compliance and monitoring checks every three (3)

months; and

iii. A Tier III offender shall have compliance and monitoring checks every month.

(6) Failure to provide accurate information or comply with the provisions of registration shall be a Felony offense.

4-1633. Retroactive Registration

A. **Retroactive Registration** – The Standing Rock Sioux Tribal Court shall have in place policies and procedures to ensure the following three (3) categories of sex offenders are subject to the registration and updating requirements of this Chapter:

(1) Sex offenders incarcerated or under the supervision of the tribe, whether for a sex offense or other crime;

(2) Sex offenders already registered or subject to a pre-existing sex offender registration requirement under tribal or state laws; and

(3) Sex offenders reentering the Tribal justice system due to conviction for any crime.

B. **Recaptured Sex Offenders** – a sex offender who has been recaptured, and any other registered sex offender, shall be ineligible to reside in housing provided by the Standing Rock Housing Authority.

4-1634. Keeping Registration Current

A. **Jurisdiction of Residency** – All sex offenders required to register in this jurisdiction shall appear within three (3) tribal business days in person at the Standing Rock Sioux Tribal Court to update any changes to their name, residence (including termination of residency), employment or school attendance. All sex offenders required to register in this jurisdiction shall, within three (3) tribal business days, inform the Standing Rock Sioux Tribal Court in writing of any changes to their temporary lodging information, vehicle information, internet identifiers or telephone numbers. In the event of a change in temporary lodging, the sex offender and the Standing Rock Sioux Tribal Court shall immediately notify the jurisdiction in which the sex offender will be temporarily staying.

B. **Jurisdiction of School Attendance** – Any sex offender who is a student in any capacity within lands subject to the jurisdiction of the Tribe regardless of location that change their school, or

otherwise terminate their schooling, shall within three (3) tribal business days appear in person at the Standing Rock Sioux Tribal Court to update that information. The Standing Rock Sioux Tribal Court shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, are immediately notified of the change.

C. **Jurisdiction of Employment** – Any sex offender who is employed by the Tribe in any capacity or otherwise is employed within lands subject to the jurisdiction of the Tribe that change their employment, or otherwise terminate their employment, shall within three (3) tribal business days immediately appear in person at the Standing Rock Sioux Tribal Court to update that information. The Standing Rock Sioux Tribal Court shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, are immediately notified of the change.

D. **Duties of the Standing Rock Sioux Tribal Court** – With regard to changes in a sex offender's registration information, the Standing Rock Sioux Tribal Court shall immediately notify:

1. All jurisdictions where a sex offender intends to reside, work, or attend school;

2. Any jurisdiction where the sex offender is either registered or required to register; and

3. Specifically with respect to information relating to a sex offender's intent to commence residence, school or employment outside of the United States, any jurisdiction where the sex offender is either registered or required to register, and the U.S. Marshals Service. The Tribal Court also shall ensure this information is immediately updated on NSOR.

4-1635. Failure to Appear For Registration and Absconding

A. **Failure to Appear** – In the event a sex offender fails to register with the Tribal Court as required by this Chapter, the Tribal Court shall immediately inform the jurisdiction that provided notification that the sex offender was to commence residency, employment or school attendance with the Tribe that the sex offender failed to appear for registration.

B. **Absconded Sex Offenders** – If the Tribal Court receives information that a sex offender has absconded, the Tribal Court shall make an effort to determine if the sex offender has actually absconded.

1. In the event no determination can be made, the Tribal Court shall ensure that the BIA, Tribal Law Enforcement and any other appropriate law enforcement agency is notified.

2. If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, the BIA, Tribal Law Enforcement and other appropriate law enforcement agency shall be informed that the sex offender has failed to appear and register.

3. If an absconded sex offender cannot be located, then the BIA, Tribal Law Enforcement and other appropriate law enforcement agency shall take the following steps:

   a. Update the registry to reflect the sex offender has absconded or is otherwise not capable of being located;

   b. Notify the U.S. Marshals Service;

   c. Seek a warrant for the sex offender's arrest. The U.S. Marshals Service or FBI may be contacted in an attempt to obtain a federal warrant for the sex offender's arrest;

   d. Update the NSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located; and

   e. Enter the sex offender into the National Crime Information Center Wanted Person File.

C. **Failure to Register** – In the event a sex offender who is required to register due to their employment or school attendance status fails to do so or otherwise violates a registration requirement of this Chapter, the Tribal Court shall take all appropriate follow-up measures including those outlined in this subsection (B) of this Section. The Tribal Court shall first make an effort to determine if the sex offender is actually employed or attending school in lands subject to the Tribe's jurisdiction.

SUBCHAPTER F.
STANDING ROCK PUBLIC SEX OFFENDER REGISTRY (SRPSOR) WEBSITE

4-1636. Website

A. **Website** – The Standing Rock Sioux Tribal Court shall use and maintain a public sex offender registry website, which shall be known as the Standing Rock Public Sex Offender Registry (SRPSOR) Website. The Tribe's registry site can be accessed at the following address: http://srst.nsopw.gov.

B. **Links** – The registry website shall include links to sex offender safety and education resources.

C. **Instructions** – The registry website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.

D. **Warnings** – The registry website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.

E. **Search Capabilities** – The registry website shall have the capability of conducting searches by (1) name; (2) county, city and/or town; and (3) zip code and/or geographic radius.

F. **Dru Sjodin National Sex Offender Public Website** – The Tribe shall include in the design of its website all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General of the United States.

4-1637. Required and Prohibited Information

A. **Required Information.** The following information shall be made available to the public on the SRPSOR website:

1. Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded;

2. All sex offenses for which the sex offender has been convicted;

3. The sex offense(s) for which the offender is currently registered;

4. The address of the sex offender's employer(s);

5. The name of the sex offender including all aliases;

6. A current photograph of the sex offender;

7. A physical description of the sex offender;

8. The residential address and, if relevant, a description of a habitual residence of the sex offender;

9. All addresses of schools attended by the sex offender; and

10. The sex offender's vehicle license plate number along with a description of the vehicle.

B. **Prohibited Information** – The following information shall not be available to the public on the SRPSOR website:

1. Any arrest that did not result in conviction;

2. The sex offender's social security number;

3. Any travel and immigration documents;

4. The identity of the victim;

5. Internet identifiers (as defined in 42 U.S.C. § 16911); and

6. All juveniles adjudicated as sex offenders.

C. **Witness Protection** – For sex offenders who are under a witness protection program, the BIA or Tribal Law Enforcement may honor the request of the United States Marshals Service or other Agency responsible for witness protection by not including the original identity of the offender on the SRPSOR website.

4-1638. Community Notification

A. **Law Enforcement Notification** – Whenever a sex offender registers or updates his or her information with the Tribe, the Standing Rock Sioux Tribal Court shall:

1. Immediately notify the FBI or other federal agency as designated by the Attorney General in order that the information may be updated on NSOR or other relevant databases;

2. Immediately notify any agency, department, or program within the Tribe that is responsible for criminal investigation, prosecution, child welfare or sex offender supervision functions, including but not limited to, Law Enforcement, whether BIA, Tribal or FBI, Tribal prosecutors and Tribal probation;

3. Immediately notify any and all other registration jurisdictions where the sex offender is registered due to the sex offender's residency, school attendance, or employment; and

4. Immediately notify National Child Protection Act agencies, which includes any agency

responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. § 5119a) when a sex offender registers or updates registration.

B. **Community Notification** – The Standing Rock Sioux Tribal Court shall ensure there is an automated community notification process in place that ensures the following:

1. Upon a sex offender's registration or update of information with the Tribe, the SRPSOR website is immediately updated;

2. The Tribe's public sex offender registry has a function that enables the general public to request an e-mail notice that will notify them when a sex offender commences residence, employment or school attendance with the tribe, within a specified zip code, or within a certain geographic radius. This email notice shall include the sex offender's identity so that the public can access the public registry for the new information. The Tribe's registry site can be accessed at the following address: http://srst.nsopw.gov; and

3. In order to facilitate notification of those members of the general public without internet access, notice shall also be posted for at least 30 days in prominent locations at the Standing Rock Sioux Tribal Courthouse, and the local reservation newspaper. Notices shall be posted upon initial registration and for 30 days after updated registration, per Tier level.

SUBCHAPTER G. SCHOOL ZONE RESTRICTIONS

4-1639. School Zone Restrictions

A. **Access Restrictions** – No person who is required to register as a sex offender shall have access to any school grounds and/or facilities of public or private elementary, middle or high school located within the exterior boundaries of the Reservation. For the purposes of this Chapter, School Grounds is defined to mean the area within the control and administration of the School to include common areas, residential areas or school buildings and except as follows:

1. Except to vote in a school building used as a public polling place, or to attend an open meeting under the Standing Rock Sioux Tribal Code of Justice held in a school building. A sex offender may not knowingly enter school grounds unless allowed on school property in compliance with a written policy adopted by the school board of a public school or the governing body of a non-public school.

2. If no written policy exists regarding entry of school grounds, a sex offender may enter school

grounds under only one of the following conditions:

a. As the parent or guardian of a student to attend a conference with school personnel to discuss the progress of the student academically or socially, participate in a child review conference in which evaluation and placement decisions may be made regarding special education services, or to attend a conference to discuss other student issues, including retentions and promotion;

b. As the parent, guardian, or relative of a student attending or participating in a function at the school having first requested and received advance permission from the school board or governing body to attend the school function and with escort from school security; or

c. As a student at the school with the written permission of the school board or governing body.

SUBCHAPTER H. IMMUNITY

4-1640. Immunity

A. **No Waiver of Immunity** – Nothing under this Chapter shall be construed as a waiver of sovereign immunity for the Standing Rock Sioux Tribe, its departments, agencies, employees or agents.

B. **Good faith** – Any person acting under good faith of this Title shall be immune from any civil liability arising out of such actions.

SUBCHAPTER I. ENFORCEMENT & REGULATION

4-1641. Chief Prosecutor

A. **Chief Prosecutor** – The Office of the Chief Prosecutor shall be responsible for the enforcement and regulation of Chapter 16, Sex Offender Registration and Notification Requirements.

SUBCHAPTER J. CRIMES & CIVIL PENALTIES

4-1642. Crimes

A. **Criminal Penalty** – Any violation of a provision of this Chapter by a sex offender who is an Indian

shall be considered a Felony.

B. **Hindrance of Sex Offender Registration:**

1. A person is guilty of an offense if they:

   a. Knowingly harbor or knowingly attempt to harbor, or knowingly assist another person in harboring or attempting to harbor, a sex offender who is in violation of this Title;

   b. Knowingly assist a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this Title; or

   c. Provide information to law enforcement agency regarding a sex offender which the person knows to be false.

C. **Failure to Provide Required Information:**

1. A person is guilty of an offense if they:

   a. Knowingly fail to provide and comply with the General Requirements required in Sections 4-1610 through 4-1628 of this Title.

D. **Failure to Register:**

1. A person is guilty of an offense if they:

   a. Knowingly fail to Register as required in Section 4-1629(A), Section 4-1631, Section 4-1632 and Section 4-1634 of this Title.

   b. The offense of failure to register is a felony and the Tribe shall not have the option of plea bargaining the offense to a lesser included offense such as criminal contempt.

E. **Failure to Appear in Person:**

1. A person is guilty of an offense if they:

   a. Knowingly fail to appear in person as required in Section 4-1630 of this Title.

F. **Absconding:**

1. A person is guilty of an offense if they:

   a. Knowingly fail to appear or abscond as provided in Section 4-1635 of this Title.

4-1643. Civil Penalty

A. **Civil Penalty** – Each violation of a provision of this Chapter by a sex offender who is not an Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including but not limited to the issuance of fines, forfeitures, civil contempt, customs and traditions, including banishment and/or exclusion.

CHAPTER 17. DOMESTIC VIOLENCE

Subchapter A. General

4-1701. General Provisions.

(a) **Purpose and Intent.** The purpose of this chapter is to recognize domestic violence as a serious crime against society and to assure the victim of such abuse the maximum protection from further abuse that the law, and those who enforce it, can provide. It is the intent of the Standing Rock Sioux Tribal Council that domestic violence is not to be excused or tolerated, and that acts of domestic violence, and the violation of restraining orders resulting from allegations of domestic violence, be prosecuted to the fullest extent allowable under the law. Furthermore, it is the intent of the Standing Rock Sioux Tribal Council that criminal laws be enforced, particularly when the persons involved are or were married, cohabitating or involved in a relationship, regardless of gender or sexual orientation. It is intended that the provisions of this chapter comply with the Violence Against Women Act, as defined under this Chapter.

(b) **Applicability of Other Code of Justice Provisions.** In general, all other relevant provisions of the Standing Rock Sioux Tribal Code of Justice – including the provisions of Title I, Title III and remainder of Title IV – are applicable to offenses, procedures and actions arising under this Chapter. However, any provision set forth in this Chapter which conflicts with a provision elsewhere in the Code of Justice shall supersede that other provision for the purposes of this Chapter only.

(c) **Presumption of Innocence.** No provision in this Chapter meant to ensure the safety of a victim – such as any "cooling off" period ordered as set forth in Section 4-1710.1 – shall be construed as violative of a defendant's presumption of innocence. Any such provision is the result of weighing the Tribe's vital interest in ensuring the safety of domestic violence victims against a reasonable inconvenience to a defendant. Likewise, any reference to a "victim" or "offender" under this Chapter does not presume guilt of any individual prior to conviction.

(d) **Tribe as a Party.** As in all matters charged in the Standing Rock Sioux Tribal Court under Title IV of the Standing Rock Code of Justice, the Tribe shall be a party to all charges brought under this Chapter.

4-1702. Jurisdiction.

The provisions of this Chapter shall be applicable, and all offenders – whether alleged, charged or convicted – subject to the jurisdiction of the Tribe, as follows:

(a) For criminal penalties:

1. All Indians within the exterior boundaries of the Reservation; and

2. All non-Indians with sufficient ties to the Tribe within the exterior boundaries of the Reservation, where the victim is a Tribal member or non-member Indian who resides within the exterior boundaries of the Reservation.

(b) For civil penalties and protection orders, all individuals within the exterior boundaries of the Reservation.

(c) Section (a)(2) of this Section does not apply to any cross-reference in this Chapter to an individual charged with violating a Domestic Violence Restraining Order issued in a case involving Family Violence under Section 4-513 of this Title.

4-1703. Definitions.

Terms used in this Chapter are defined as follows:

(a) **"Emergency"** means a condition or circumstance in which any individual is, or reasonably believes themselves to be, in imminent danger of domestic violence or in which property is, or is reasonably believed by the individual to be, in imminent danger of damage or destruction.

(b) **"Domestic abuse"** shall have the same meaning as "domestic violence."

(c) **"Domestic Violence"** means violence committed:

1. By a current or former spouse or intimate partner of the victim;

2. By a person with whom the victim shares a child in common, including where either the victim or defendant is pregnant by the other;

3. By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;

4. By a person 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 interaction between the persons involved in the relationship; or

5. By a person similarly situated to a spouse of the victim under the domestic violence laws of the Standing Rock Sioux Tribe.

(d) **"Domestic violence program"** shall mean a program that provides emergency housing for victims of domestic violence and their dependents, and which may include some or all of the following additional services:

(1) Counseling;

(2) Advocacy;

(3) Community education on domestic violence; and

(4) Referral to other sources for services not provided by the domestic abuse program.

(e) **"No Contact Order"** means an order made in conjunction with, or included within, bond conditions for an individual charged with an offense under this Chapter that either prohibits or restricts such an individual's contact with the protected party named in the order.

(f) **"Reservation"** shall mean the Standing Rock Sioux Reservation.

(g) **"Spouse or Intimate partner"** shall mean a current or former spouse; a person who is or has been in a social relationship of a romantic or intimate nature; persons who have a child in common regardless of whether they are or have been married or have lived together at any time, including where the victim or defendant is pregnant by the other; and, for the purposes of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the person committing domestic violence as determined by the court under section 4-1709.

(h) **"Sufficient ties to the Tribe,"** for the purpose of this Chapter, shall mean an individual who:

1. Lives within the exterior boundaries of the Reservation;

2. Is employed by the Tribe; or

3. Is a spouse or intimate partner of either:

   a. A Tribal member; or

   b. A non-member Indian who resides within the exterior boundaries of the Reservation.

(i) **"Violence"** as the term is used in this Chapter pertaining to "domestic violence" includes:

1. The act of inflicting bodily injury through:

   i. Commission or attempted commission of rape under Section 4-508;

   ii. Commission or attempted commission of sexual assault under Section 4-515;

   iii. Commission or attempted commission of simple assault under Section 4-517;

   iv. Commission or attempted commission of aggravated assault under Section 4-518;

   v. Commission or attempted commission of stalking under Section 4-519; or

   vi. Commission or attempted commission of harassment under Section 4-512;

2. Creating the apprehension of bodily injury; and/or

3. Preventing a victim from accessing services.

(j) **"Violence Against Women Act"** or **"VAWA"** shall mean the Violence Against Women Act Reauthorization Act of 2013, P.L. 113-4, as signed into law on March 7, 2013 and encoded in the United States Code, and as may be amended from time to time.

(k) **"Bodily Injury"** shall mean any act, except one done in self-defense, that results in physical injury or sexual abuse.

Subchapter B. Offenses

4-1704. Domestic Violence.

A person commits an act of Domestic Violence defined in this Chapter, shall be guilty of the crime of Domestic Violence, and shall be sentenced as follows:

(a) A first or second conviction for Domestic Violence shall be a Class A Misdemeanor.

(b) A third or subsequent conviction for Domestic Violence shall be a Felony.

(c) An offender convicted of Domestic Violence, regardless of how many prior convictions the offender has under this Chapter, is required to pay for and complete a counseling assessment with a focus on violence, controlling behavior, dangerousness and chemical dependency. The incident report may be copied and sent to the domestic violence class to assist the counseling provider in properly assessing the offender's need for counseling and

treatment. Counseling providers shall take all required precautions to ensure the confidentiality of the report. If the report contains confidential information relating to the victim's location or not related to the charged offense, that information must be redacted from the report prior to being sent to the offender intervention program.

4-1705. Violation of a Domestic Violence Protection Order

A person commits the offense of Violation of a Domestic Violence Protection Order, if he/she knowingly violates any provision of a Domestic Violence Protection Order issued pursuant to Sections 4-1705 or 4-1706, 4-513, or recognized under Section 4-1707, of this Title, and shall be sentenced as follows:

(a) A first or second conviction for Violation of a Domestic Violence Protection Order, whether, ex parte, temporary or permanent in nature, is a Class A Misdemeanor

(b) The punishment for any person convicted of a third or subsequent offense of violating a Domestic Violence Protection Order shall be guilty of a Felony.

Subchapter C. Domestic Violence Protection Orders

4-1706. Domestic Violence Protection Orders

(a) An action for a protection order commenced by a verified application alleging the existence of domestic abuse may be brought in Tribal Court by any person if the court determines that the relationship between that person and the alleged offender is sufficient to warrant the issuance of a domestic violence protection order. An action may be brought under this section, regardless of whether a divorce action has been filed.

(b) An application may be on a Form provided by the Tribal Court or in other form, but must at minimum identify the alleged perpetrator, allege that the applicant is in danger of abuse from the respondent and has been the victim of abuse committed by the respondent, and particularly describing the nature of the abuse and the dates thereof.

(c) Upon receipt of the application, the court shall order a hearing to be held no later than 14 days from the date the application was filed unless extended pursuant to subsection (d) of this Section.

(d) Service shall be made upon the respondent not less than seven (7) days prior to the hearing. If service cannot be made, the court may set a new date. Proof of service shall be filed with the Court after service is made and prior to the scheduled hearing date.

(e) At any hearing regarding the issuance of a Domestic Violence Restraining Order, every

respondent has the right to be represented by an attorney at their own expense.

(f) Upon showing of actual or imminent domestic abuse, the court may enter a protection order after due notice and a full hearing. The relief provided by the court may include any or all of the following:

(1) Restraining any party from having any contact or communication, direct or indirect - including by phone, mail, email, text message, in-person or through third-persons – with a petitioner, the petitioner's children or the petitioner's spouse or intimate partner;

(2) Prohibiting the respondent from being within a specified distance from the petitioner, the petitioner's children or the petitioner's spouse or intimate partner;

(3) Restraining any party from threatening, molesting or injuring any other person;

(4) Excluding and/or prohibiting the respondent from a specific household, from the residence of another person against whom the domestic abuse is occurring or from a domestic abuse care facility, where this exclusion is necessary to the physical or mental well-being of the applicant or others;

(5) Prohibiting the individual from entering the petitioner's residence, school, business or place of employment, or the children's school or daycare;

(6) Awarding temporary custody and/or establishing temporary visitation rights and/or temporary child support with regard to children. The court may order that any such visitation be supervised or otherwise restricted. In the event the Court orders temporary child support, the Court shall notify the Standing Rock Sioux Tribe Child Support Enforcement Agency to assist in determining the amount of child support owed pursuant to the relevant provisions of the Standing Rock Sioux Tribal Code of Justice;

(7) Recommending or requiring counseling with a domestic abuse program or other agency that provides services which the court deems appropriate. The court may request a report from the designated agency within a time period established by the court;

(8) Awarding temporary use of personal property, including motor vehicles, to either party; and

(9) Any other order the Court deems necessary or appropriate to ensure the safety of the petitioner or petitioner's children or petitioner's spouse or intimate partner.

(g) The court may amend its order or agreement at any time upon subsequent petition filed by either party.

(h) No order or agreement under this section shall affect title to any real property in any manner.

4-1707. Temporary Ex Parte Protection Order.

(a) Where an application under Section 4-1705 alleges an immediate and present danger of domestic violence to the applicant based upon an allegation of a recent incident of domestic violence or threat of domestic violence, the Court, upon finding by a preponderance of the evidence that a petitioner is in immediate danger of domestic violence, may grant an ex parte temporary protection order, pending a full hearing, granting such relief as the court deems proper.

(b) An ex parte temporary protection order may include any relief within the Court's authority to provide under Section 4-1705(F).

(c) An ex parte temporary protection order shall remain in effect, in the court's discretion, for not more than 30 days, unless otherwise terminated or amended by the court.

(d) A full hearing as provided by Section 4-1705 shall be set not later than 14 days from the issuance of the temporary order. The respondent shall be served forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for hearing. If service cannot personally be made on the respondent within seven (7) days of issuance of an ex parte order, law enforcement shall mail a copy of the order, return receipt requested, to the last known address of the respondent. Proof of service shall be filed with the Court.

(e) The clerk of court shall transmit a copy of each temporary protection order, or extension, modification or termination thereof, by the close of the business day which the order was granted, to the local law enforcement agency with jurisdiction over the residence of the applicant or over the residence at which the actual domestic violence, which is the subject of the temporary protection order, has occurred, or is likely to occur if requested by the applicant and approved by the court.

(f) No filing fee shall be required for any individual petitioning for a temporary ex parte restraining order under this Section.

4-1708. Domestication, Recognition and Enforcement of Foreign Protection Orders.

(a) Pursuant to 18 U.S.C. § 2265, an injunction for protection against domestic violence issued by a court of competent jurisdiction shall be accorded full faith and credit by the Standing Rock Sioux Tribal Court and enforced by a law enforcement agency, provided that:

(1) The court had jurisdiction over the parties and the matter; and

(2) Reasonable notice and opportunity to be heard was given to the person against whom the

order is sought, sufficient to protect that person's right to due process, to the extent required under 18 U.S.C. § 2265.

(b) Ex parte foreign injunctions for protection are not eligible for enforcement under this Section unless notice and opportunity to be heard have been provided within the time required by the foreign state or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(c) Neither residence on the Standing Rock Sioux Reservation nor registration of foreign injunctions for protection shall be required for enforcement of such order by local law enforcement, and failure to register the foreign order shall not be an impediment to its enforcement.

(d) The following domestication procedure shall be available to protected persons who hold orders from a court of a foreign state:

(1) A protected person shall file a certified copy of a foreign order of protection with the Tribal Court. However, nothing in this section shall operate to preclude the enforcement of any order of protection determined by the law enforcement officer to be valid even if the protected person does not have a certified copy of the foreign protection order filed with the Tribal Court.

(2) At the hearing to recognize the foreign order, the protected person must swear by affidavit, that to the best of the protected person's knowledge and belief, the attached certified copy of the foreign order is currently in effect as written and has not been superseded by any other order and that the respondent has been given a copy of it.

(3) After recognition of the foreign order, the local law enforcement shall examine the certified copy of the foreign order and register the order in a database, noting that it is a foreign order of protection.

(e) Law enforcement officers shall enforce foreign orders of protection as if they were entered by the Tribal Court. Upon presentation of a foreign protection order by a protected person, a law enforcement officer shall assist in enforcement of all of its terms, pursuant to federal law, except matters related to child custody, visitation and support. As to those provisions only, enforcement may be obtained upon domestication of the foreign order.

(1) Before enforcing a foreign protection order, a law enforcement officer should confirm the identity of the parties present and review the order to determine that, on its face, it has not expired. Presentation of a certified or true copy of the protection order shall not be required as a condition of enforcement, provided that a conflicting certified copy is not presented by the respondent or the individual against whom enforcement is sought.

(2) A law enforcement officer shall use reasonable efforts to verify service of process.

Subchapter D. Procedural Requirements for Domestic Violence Cases

4-1709. Arrest.

(a) If a law enforcement officer has probable cause to believe a person has either committed an offense of domestic violence or violated a domestic violence restraining order pursuant to this Chapter, whether the offense or violation was committed within or outside the presence of the officer, the law enforcement officer shall arrest and take into custody the alleged offender. An arrest under this Section should be made as soon as possible after probable cause has been formed in order to ensure the safety of the victim. Failure to arrest does not give rise to civil liability.

(b) When a law enforcement officer receives a complaint of domestic violence from two (2) opposing persons that they have assaulted one another, the officer shall at minimum arrest the person whom he or she believes to have been the primary aggressor. In making this determination, and in determining whether the non-primary aggressor should also be arrested, the officer shall make every reasonable effort to consider:

(1) The comparative extent of injuries inflicted;

(2) If threats or intimidation tactics were used, including consideration of who made the threats creating fear of bodily injury;

(3) The history of domestic abuse between the persons involved or prior complaints from the same residence, considering who made them and what was alleged;

(4) The likelihood of future injury to each person; and

(5) Whether one person acted in self-defense.

(c) A law enforcement officer shall use professional methods at all times. An officer shall not base an arrest decision solely on the request of a victim to do so, or on the officer's perception of the willingness of a victim or witness to testify or otherwise participate in a judicial proceeding. When an officer has probable cause to make an arrest under this Chapter, the officer shall make such an arrest regardless of the victim's wishes; however, those wishes should be noted in the officer's report.

(d) Whenever a law enforcement officer is called to the scene of a reported incident of domestic violence, or otherwise receives information that an incident of domestic violence has occurred, and either does not make an arrest or arrests more than one (1) person for domestic violence in connection with the same incident, he or she shall file a written report with his or her supervisor, setting forth the reason or reasons for his or her decision.

(e) Incident to arrest under this Chapter, a law enforcement officer shall seize any and all weapons alleged to have been involved in the crime, or which were in plain view of the officer or discovered pursuant to a legal search, including a search conducted pursuant to a

warrant, a safety pat-down search, a consensual search or a search incident to arrest.

4-1710. Bail.

(a) Due to the overwhelming risk of repeated violence against a victim of domestic violence, which is not reduced when a person is arrested and subsequently released for domestic violence against that victim, in any bail conditions set by the Court for an individual charged under this Chapter, regardless of whether a domestic violence protection order has been issued under this Chapter and unless there are extraordinary circumstances which require otherwise, the Court shall issue a no-contact order. The protected party, law enforcement and the defendant shall be provided with a certified copy of any no-contact order issued under this subsection. A no-contact order may not be vacated without notice to the protected party and the tribal prosecutor and a hearing. Any order for pre-trial release may include any other provisions permitted under Tribal law, including participation in any counseling programs available to the defendant.

(b) Any individual released on bail under this Chapter, whose release is revoked for violation of a bond condition prohibiting or restricting contact with the victim, shall thereafter not be entitled to pre-trial release under any conditions. A violation of any such condition may be treated separately and independently from any other potential charge for violation of a restraining order under this Chapter.

4-1710.1. Arraignment.

At arraignment, the Court may order that any person arrested under this Chapter be held for up to 72 hours after arrest as a mandatory "cooling off" period to ensure the safety of the victim.

4-1711. Filing of Complaint.

Unless otherwise signed by the victim of any offense under this Chapter, or other individual permitted to do so under Section 3-101 of the Code of Justice, the law enforcement officer making an arrest under this Chapter shall sign a complaint against the alleged offender on behalf of the Standing Rock Sioux Tribe. In any event when a complaint is signed under this Chapter, the law enforcement officer making the arrest shall submit, with the filed complaint, a detailed report of the circumstances of the arrest, along with statements from the victim and other witnesses.

4-1712. Victims' Rights.

(a) To the greatest extent possible pursuant to the authority of the Tribe and Tribal Court, a victim of an offense charged under this Chapter has a right:

(1) To be treated with fairness, respect and dignity, and to be free from intimidation, harassment or abuse, throughout the criminal justice process;

(2) To be informed, upon request, when the accused or convicted person is released from custody or has escaped;

(3) To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present;

(4) To be heard, upon request, at any proceeding involving a post-arrest release decision, a negotiated plea or sentencing;

(5) To refuse a pretrial interview or deposition request by the defendant, the defendant's attorney or any other person acting on behalf of the defendant;

(6) To confer with the prosecution, upon request, before or after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition;

(7) To read sentencing recommendations relating to the crime against the victim when they are available;

(8) To read police reports related to the crime involving the victim when they are available;

(9) To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury;

(10) To be heard, upon request, at any proceeding when any post-conviction release from confinement is being considered;

(11) To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence;

(12) To have rules of criminal procedure and rules of evidence that protect victims' rights and that are subject to Tribal Council amendment or appeal; and

(13) To be informed of victims' rights.

(b) The rights that are established by and enumerated in this chapter arise on the arrest or formal charging of the person or persons who is alleged to be responsible for a criminal offense against a victim. The rights and duties continue to be enforceable pursuant to this chapter until the final disposition of the charges, including acquittal or dismissal of the charges, all post-conviction release and relief proceedings and the discharge of all criminal proceedings relating to restitution. If a defendant is ordered to pay restitution to a victim, the rights and duties continue to be enforceable until restitution is paid or a criminal restitution order is entered in favor of the victim.

(c) If a defendant's conviction is reversed and the case is returned to the trial court for further

proceedings, the victim has the same rights that were applicable to the criminal proceedings that led to the appeal or other post-conviction relief proceedings.

(d) After the final termination of a criminal prosecution by dismissal with prejudice or acquittal, a person who has received notice and the right to be present and heard pursuant to the victims' rights stated in this chapter is no longer entitled to such rights.

(e) It is at the victim's discretion to exercise his/her rights to be present and heard at a court proceeding, and the absence of the victim does not preclude the court from proceeding with the hearing or trial.

(f) A victim's right to be heard may be exercised, at the victim's discretion, through an oral statement or submission of a written statement.

(g) Upon the request of the victim and after consultation with the prosecutor, law enforcement shall return to the victim any property belonging to the victim that was taken during the course of the investigation or shall inform the victim of the reasons why the property will not be returned. Law enforcement shall make reasonable efforts to return the property to the victim as soon as possible. If the victim's property has been admitted as evidence during a trial or hearing, the court may order its release to the victim if a photograph can be substituted. If evidence is released pursuant to this subsection, the defendant or the defendant's attorney or investigator may inspect and independently photograph the evidence before it is released.

(h) A victim advocate shall not be disclosed as a witness or otherwise disclose any communication, except compensation or restitution information, between himself and the victim, unless the victim consents in writing to the disclosure.

(i) Communication between a victim and victim advocate is not privileged if the victim advocate knows that the victim will give or has given perjured testimony or if the communication contains exculpatory material. The victim advocate must disclose such information to the prosecutor.

(j) Before, during and immediately after any court proceeding, the court shall provide appropriate safeguards to ensure the safety and comfort of the victim and all parties involved.

(k) Unless the victim consents, the victim shall not be compelled to submit to a pre-trial interview that is conducted by the defendant, the defendant's attorney or an agent of the defendant.

1. The defendant, the defendant's attorney or an agent of the defendant shall only initiate contact with the victim through the Prosecutor Office. The Prosecutor Office shall promptly inform the victim of the defendant's request for an interview and shall advise the victim of the victim's right to refuse the interview.

2. The victim has the right to terminate the interview at any time and to refuse to answer any question during the interview. The prosecutor has standing at the request of the victim to protect the victim from harassment, intimidation or abuse and may seek any appropriate protective court order.

3. If the defendant or the defendant's attorney comments at trial on the victim's refusal to be interviewed, the court shall instruct the jury that the victim has the right to refuse an interview.

(l) The victim has the right at any court proceeding not to testify regarding the victim's addresses, telephone numbers, place of employment or other locating information unless the victim consents or the court orders disclosure after a finding that a compelling need for the information exists. Any court proceeding where such information might be disclosed shall be in chambers.

4-1713. <u>Persons Required to Report.</u>

(a) The following individuals - having knowledge or reasonable cause to believe that a person coming before him or her in his or her professional or official capacity is a victim of domestic violence, or is in imminent danger of being a victim of domestic violence - shall report the circumstances to the local law enforcement agency: Any physician, physician's assistant, psychologist, psychiatrist, mental health counselor, nurse, nurse's aide, nurse practitioner, midwife, dentist, dental assistance, hygienist, optometrist, any medical or mental health professional, school principal, school teacher, other school official, social worker, child day care center worker or other child care staff, foster parents, residential care or institutional personnel, peace officer or other law enforcement official, judge or attorney (if not prevented by the attorney client privilege), probation staff, clerk of Court, other judicial system official, personnel of a domestic violence program or personnel of a domestic violence shelter care facility.

(b) All persons required to report cases of known or suspected domestic abuse shall immediately provide a written statement to the local law enforcement agency.

(c) Any person subject to mandatory reporting under this section who fails, neglects or refuses to report acts of domestic violence may, after notice and hearing, be assessed a civil penalty in an amount not to exceed $500.00.

4-1714. <u>Immunity from Liability.</u>

(a) Any person, other than the alleged offender, who participates in good faith in making a report, assists in an investigation or provides preventive or remedial services with respect to domestic violence, is immune from any civil or criminal liability that might otherwise result from those actions.

(b) A law enforcement officer shall not be held liable in civil action for an arrest based on probable

cause or enforcement in good faith of a court order or any other action or omission in good faith under this Chapter arising from an alleged incident of domestic violence brought by any party to an incident.

4-1715. Rights and Required Procedures

Notwithstanding any other provision of Tribal law, the requirements and rights set forth in this Section shall be ensured in addition to – or shall supersede any inconsistent – provisions set forth in Titles I and III in order to ensure compliance with the Violence Against Women Act:

(a) Any individual charged with an offense under this Chapter shall:

1. Be entitled to those rights enumerated in the Indian Civil Rights Act, 25 U.S.C. § 1302;

2. Be entitled to a trial by an impartial jury as provided in Title III of the Standing Rock Sioux Tribal Code.

3. Be entitled to the effective assistance of counsel, at least equal to that guaranteed by the United States Constitution, and, for any indigent defendant, through the appointment of a free, public defender qualified and retained by the Tribe to serve in such position as provided under Title I of the Code of Justice; and

4. Be instructed by the judge presiding over their case, at the defendant's initial appearance before the Court, of their rights, including any rights provided under 25 U.S.C. § 1304(e) and the right to habeas corpus petitions.

(b) Any case brought against a defendant under this Chapter shall conform to the following standards and requirements:

1. Any case brought under this Chapter shall be presided over by a law-trained judge licensed to practice law in any jurisdiction in the United States – including a Tribe – and who possesses sufficient legal training to preside over criminal proceedings. To the extent a law-trained judge – qualified to preside over such case under this subsection – who is regularly employed by the Tribe is unable to preside over the case, a law-trained and qualified special judge shall be appointed; and

2. All proceedings occurring on the record in any case brought under this Chapter shall be recorded in a manner that preserves the words spoken in the proceedings, with a copy of any and all such recordings available upon request and payment of any reasonable fee for production of the copy, provided that such fee may be waived for an indigent defendant at the discretion of the Court.

4-1716. Savings and Severability.

(a) Enactment of this Chapter shall not affect the prosecution for any offense, the sentencing for

that offense or the recovery of any penalty or forfeiture pending at the time this Chapter was enacted. To the extent any provision or section of this Chapter is repealed, no prosecution for any offense, or the recovery of any penalty or forfeiture, pending at the time the section or provision is repealed, or any judgment imposed by the Court, whether such repeal be express or implied, shall be affected by such repeal, unless a contrary intention is expressly declared in the repealing act.

(b) To the extent any section or provision of this Chapter is held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining parts of this Chapter, and the Tribal Council hereby declares it would have enacted the remaining parts of this Chapter even if it had known such part or parts would be declared invalid.