

TITLE 5

CRIMINAL CODE

History and Amendments¹

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

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

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

Title 5 amended by Tribal Resolution No. 98-115, approved by the B.I.A. effective on 11/18/98.

Title 5 amended by Tribal Resolution No. 99-31, approved by the B.I.A., effective on 4/29/99.

Title 5 amended by Tribal Resolution No. 00-172, approved by the B.I.A.

Title 5 amended by Tribal Resolution No. 2010-84, approved by the B.I.A., effective on DATE.

Title 5 amended by Tribal Resolution No. 2018-##, effective on DATE.

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

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TITLE 5

SOUTHERN UTE INDIAN TRIBAL CODE

CRIMINAL PROCEDURE CODE

ARTICLE 1. PURPOSE AND DEFINITIONS

5-1-101. Purpose. The Tribe recognizes that its strength and sovereignty is grounded in its members and that a prosperous future requires a safe and healthy community. Violence and criminal activity are serious behaviors that impact our community's health, safety, and welfare. Through this Code the Tribe will continue ensuring our people's safety, protecting the community, and ensuring that offenders are held accountable to the community.

5-1-102. Definitions.

- (1) **Act** means a bodily movement, and includes words and possession of property.
- (2) **Adulterated** means varying from the standard of composition or quality prescribed by law or commercial usage.
- (3) **Authorized purchaser** means any of the following persons:
 - (a) A person with a valid prescription that is issued for a legitimate medical purpose in the usual course of professional practice that is based upon a qualifying medical relationship by a practitioner registered by the Attorney General.
 - (b) Any practitioner or other registrant who is otherwise authorized by their registration to dispense, procure, purchase, manufacture, transfer, distribute, import, or export the substance under this chapter.
 - (c) A person or entity providing documentation that establishes the name, address, and business of the person or entity and which provides a legitimate purpose for using any "date rape drug" for which a prescription is not required.
- (4) **Bodily injury** means physical pain, illness, or any impairment of physical or mental condition.
- (5) **Conduct** means an act or omission and its accompanying state of mind or, where relevant, a series of acts or omissions.

- (6) **Contraband** means that property or those articles that are intrinsically illegal to possess such as gambling devices, illegal weapons, or an illegal controlled substance.
- (7) **Controlled substance** means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of the Federal Controlled Substances Act. This term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1954. Nothing in this Code shall be construed or interpreted to prohibit such reasonable regulation and registration by the federal government and the Southern Ute Tribal Council of those persons who cultivate, harvest, or distribute controlled substances as may be consistent with their authority and the provisions of tribal or federal law.
- (8) **Credible threat** means a threat or physical action that would cause a reasonable person to be in fear for the person's life or safety or the safety of his or her immediate family.
- (9) **Date rape drug** means any drug the purpose or effect of which is to induce an unconscious or sedated state in a potential date-rape victim.
- (10) **Deadly weapon** means any of the following, which in the manner it is used or intended to be used, is capable of causing death or serious bodily injury:
- (a) A firearm, as defined herein, whether loaded or unloaded;
 - (b) A knife, or any other dangerous instrument capable of inflicting cutting or stabbing, or tearing wounds.
 - (c) A bludgeon; or
 - (d) Any other instrument, which, when used as a weapon, is capable of causing death or serious bodily injury.
- (11) **Drug paraphernalia** means any item primarily intended or designed for use in ingesting, inhaling, or otherwise introducing controlled substances into the human body.
- (12) **Firearm** means any weapon which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive.
- (13) **Illegal weapon** means any of the following:
- (a) A firearm silencer, including any device causing or having the effect of silencing, muffling, or lessening the sound of the firing of a firearm;
 - (b) A machine gun or any other firearm that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;

- (c) A shotgun with a barrel length of less than 18 inches or an overall length less than 26 inches;
 - (d) A rifle with a barrel length of less than 16 inches or an overall length less than 26 inches;
 - (e) Any knife having a blade that is released, forcefully projected or revealed from the handle or sheath by means of a spring-loaded device, explosive charge, the force of gravity or centrifugal force or by pressure applied to a button, spring, or other device in its handle;
 - (f) Any blackjack, billy, or other hand-operated striking weapon consisting, at the striking end, of an encased piece of lead or other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact;
 - (g) Any device designed for projecting gas-filled projectiles which release their contents after having been projected from the device and includes projectiles designed for use in such a device;
 - (h) Metallic knuckles;
 - (i) Any firearm that lacks a serial number or contains an altered or obliterated serial number.
- (14) **Mental culpability** means intentionally, or with intent, or knowingly, or willfully, or recklessly, or with criminal negligence as defined as follows:
- (a) **Intentionally or with intent.** All offenses defined in this Code in which the mental culpability requirement is expressed as “intentionally” or “with intent” are declared to be specific intent offenses. A person acts “intentionally” or “with intent” when one’s conscious objective is to cause the specific result proscribed by the Code provision defining the offense, whether or not the result actually occurred.
 - (b) **Knowingly or willfully.** All offenses defined in this Code in which the mental culpability requirement is expressed as “knowingly” or “willfully” are declared to be general intent crimes.
 - (i) A person acts “knowingly” or “willfully” with respect to conduct or to a circumstance described by the Code defining an offense when he is aware that his conduct is of such nature or that such circumstance exists.
 - (ii) A person acts “knowingly” or “willfully”, with respect to a result of one’s conduct, when he is aware that his conduct is practically certain to cause the result.

- (c) **Recklessly.** A person acts recklessly when he consciously disregards a substantial and unjustifiable risk that a result will occur or that a circumstance exists.
- (d) **Criminal negligence.** A person acts with criminal negligence when, through a gross deviation from the standard of care that a reasonable person would exercise, he fails to perceive a substantial and unjustifiable risk that a result will occur or that a circumstance exists.
- (15) **Occupied structure** means a boat, trailer, airplane, vehicle, structure, or place adapted for overnight accommodation of persons or animals or for carrying on business therein, whether or not the person is actually present.
- (16) **Omission** means a failure to perform an act as to which a duty of performance is imposed by law.
- (17) **Peace officer** means any commissioned member of any law enforcement department or division of the Southern Ute Indian Tribe or any other jurisdiction.
- (18) **Photograph** means a motion picture, videotape, live feed, print, negative, slide, or other mechanically, electronically, or chemically produced or reproduced visual material.
- (19) **Protection order** means any order issued by the Tribal Court or issued by another court and entitled to full faith and credit under tribal and federal law.
- (20) **Public place** means a place that a substantial number of the public or tribal membership has access, and includes but is not limited to highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of buildings and facilities.
- (21) **Qualifying medical relationship** means a medical relationship that exists when the practitioner has conducted at least one medical evaluation with the authorized purchaser in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.
- (22) **Receives** means acquiring possession, control or title.
- (23) **Serious bodily injury** means bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree.
- (24) **Sexual contact** means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any

person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

- (25) **Sexual intrusion** means any intrusion, however slight, by any object or any part of a person's body, except the mouth, tongue, or penis, into the genital or anal opening of another person's body if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification, or abuse.
- (26) **Sexual penetration** means sexual intercourse, cunnilingus, fellatio, anilingus, or anal intercourse. Emission need not be proved as an element of any sexual penetration. Any penetration, however slight, is sufficient to complete the crime.
- (27) **Voluntary act** means an act performed consciously as a result of effort or determination, and includes the possession of property if the person was aware of his physical possession or control for a sufficient period to have been able to terminate it.

ARTICLE 2. THEFT, ROBBERY, BURGLARY, FRAUD, AND RELATED OFFENSES

5-2-101. Theft.

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

- (f) Intentionally fail to reveal the whereabouts of or to return property to the true owner or representative or to the person from whom it was received within 72 hours after the time agreed to return it.
- (3) Any person who violates this Section commits a class 2 criminal offense.

5-2-102. Theft by receiving stolen property.

- (1) It is unlawful to knowingly obtain control over any stolen thing of value, knowing the thing of value to have been stolen by another with the intent to permanently deprive the original owner of use or benefit.
- (2) Any person who violates this Section commits a class 3 criminal offense.

5-2-103. Robbery.

- (1) It is unlawful to knowingly take anything of value from a person or presence of another by the use of force, threats, or intimidation.
- (2) Any person who violates this Section commits a class 2 criminal offense.

5-2-104. Aggravated robbery. It is unlawful if during a robbery or immediately fleeing from one:

- (1) To be armed with a deadly weapon with intent, if resisted, to kill, maim, or wound any person; or
- (2) To knowingly wound or strike any person with a deadly weapon or by using force, threat, or intimidation with a deadly weapon knowingly put any person in reasonable fear of death or bodily injury; or
- (3) To present another, aiding or abetting the perpetration of the robbery, armed with a deadly weapon, with the intent, either on the part of the defendant or another, if resistance is offered, to kill, maim, or wound the person robbed or any other person, or by the use of force, threats, or intimidation put any person in reasonable fear of death or bodily injury; or
- (4) To possess any article used or fashioned in a manner to lead any person who is present reasonably to believe it to be a deadly weapon or represent verbally or otherwise that he is then and there so armed.
- (5) Any person who violates this Section commits a class 1 criminal offense.

5-2-105. Burglary.

(1) **First degree burglary.**

- (a) It is unlawful to knowingly enter or remain unlawfully after a lawful or unlawful entry, in a building or occupied structure with the intent to commit an offense other than trespass, against another person or property, and if in effecting entry or while in the building or occupied structure or in immediate flight therefrom, the person or another participant in the crime assaults or menaces any person, the person or another participant is armed with explosives, or the person or another participant uses a deadly weapon or possesses and threatens the use of a deadly weapon.
- (b) Any person who violates this Section commits a class 1 criminal offense.

(2) **Second degree burglary.**

- (a) It is unlawful if the person knowingly breaks an entrance into, enters unlawfully in, or remains unlawfully after a lawful or unlawful entry in a building or occupied structure with intent to commit a crime against another person or property.
- (b) Any person who violates this Section commits a class 2 criminal offense.

(3) **Third degree burglary.**

- (a) It is unlawful if with intent to commit a crime one enters or breaks into any vault, safe, cash register, coin vending machine, product dispenser, money depository, safety deposit box, coin telephone, coin box, or any other apparatus or equipment.
- (b) Any person who violates this Section commits a class 3 criminal offense.

5-2-106. Trespass.

- (1) It is unlawful to knowingly and without permission to enter or remain on or in:
 - (a) The premises or motor vehicle of another; or

(b) Tribal property, a business, a hotel, motel, condominium, or apartment building.

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

5-2-107. Illegal sale or disposal of tribal property.

(1) It is unlawful to knowingly sell or in any way dispose of trust or tribal property without proper authorization.

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

5-2-108. Fraud.

(1) It is unlawful to obtain money, property, or services by willful misrepresentation or deceit.

(2) It is unlawful to issue a check to pay for services, wages, salary, commissions, labor, rent, money, property, or other thing of value, knowing one has insufficient funds with the drawee, and with the intent to defraud.

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

5-2-109. Extortion. It is unlawful to knowingly obtain the property of another by threatening to:

(1) Inflict bodily injury on anyone; or

(2) Accuse anyone of a criminal offense; or

(3) Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business reputation; or

(4) Take or withhold action as an official, or cause an official to take or withhold some action; or

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

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

5-2-110. Embezzlement.

- (1) It is unlawful if one has lawful custody of property not his own and knowingly converts the property to his own use.
- (2) Any person who violates this Section commits a class 2 criminal offense.

5-2-111. Forgery. It is unlawful, with intent to defraud, to falsely sign, make, or offer, or alter any writing or electronic document, which is or purports to be, or which is calculated to become or to represent if completed:

- (1) Part of an issue of money, stamps, securities, or other valuable instruments issued by a government or government agency; or
- (2) Part of an issue of stock, bonds, or other instruments representing interests in or claims against a corporate or other organization or its property; or
- (3) A deed, will, codicil, contract, assignment, commercial instrument, promissory note, check, or other instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status; or
- (4) A public record or an instrument filed or required by law to be filed or legally fileable in or with a public office or public servant; or
- (5) A written instrument officially issued or created by a public office, public servant, or government agency; or
- (6) Part of an issue of tokens, transfers, certificates, or other articles manufactured and designed for use in transportation fees upon public conveyances, or as symbols of value usable in place of money for the purchase of property or services available to the public for compensation; or
- (7) Part of an issue of lottery tickets or shares designed for use in a lottery; or
- (8) A document-making implement that may be used or is used to produce a false identification document or in the production of another document-making implement to produce false identification documents; or
- (9) Any written academic instrument or document.
- (10) Any person who violates this Section commits a class 2 criminal offense.

5-2-112. Misappropriation of property of an estate.

- (1) It is unlawful if one, without proper authority or with intent to deprive an heir's rightful claim, misappropriates any property of an estate, except burying personal effects with the deceased or burning of personal effects.
- (2) Any person who violates this Section commits a class 3 criminal offense.

5-2-113. Deceptive business practices. It is unlawful, if in the course of business, to knowingly:

- (1) Use or possesses for use a false weight or measure or any other device for falsely determining or recording any quality or quantity of any commodity or service; or
- (2) Sell, offer to sell or deliver less than the represented quality or quantity of any commodity or service; or
- (3) Sell or offer to sell adulterated or mislabeled commodities; or
- (4) Make a false or misleading statement in any advertisement addressed to the public or a substantial public segment to promote buying or selling property or services.
- (5) Any person who violates this Section commits a class 5 criminal offense.

ARTICLE 3. OFFENSES AGAINST GOVERNMENTAL OPERATIONS

5-3-101. Bribery.

- (1) It is unlawful to offer, confer or agree to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion, or other action in his official capacity or while being a public servant solicits, accepts or agrees to accept any pecuniary benefit upon an understanding that his vote, opinion, judgment, exercise of discretion, or other action as a public servant will be influenced.
- (2) Any person who violates this Section commits a class 2 criminal offense.

5-3-102. Official oppression. It is unlawful, when acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity and knowing that one's conduct is illegal, to:

- (1) Subject another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or
- (2) Deny or impede another in the exercise or enjoyment of any right, power, or immunity.
- (3) Any person who violates this Section commits a class 3 criminal offense.

5-3-103. Official misconduct. It is unlawful to:

- (1) Being a public servant and with intent to benefit himself or another or harm another, knowingly commit an unauthorized act, which purports to be an act of his office or knowingly refrain from performing a nondiscretionary duty imposed upon him by law or clearly inherent in the nature of his office; or
- (2) Being a public servant and knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant which information has not been made public, acquire or divest himself of a valuable interest in any property, transaction or enterprise which may be affected by such action or information; or
- (3) Speculate or wager on the basis of such action or information; or
- (4) Deprive another of the intangible right of honest services; or
- (5) Knowingly aid another to do any of the foregoing.
- (6) Any person who violates this Section commits a class 3 criminal offense.

5-3-104. Perjury.

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

5-3-105. False alarm, false charge, and false information. It is unlawful to knowingly:

- (1) Falsely cause an alarm of an emergency to be transmitted to or within any organization, to any official or volunteer, for dealing with emergencies involving danger to life or property; or

- (2) Give false identifying information, such as name, address, birth date, social security number, or driver's license, social security, tribal identification or other identifying number, to any law enforcement officer in the lawful performance of his duties; or
- (3) Report to law enforcement authority an offense or other incident within their concern, knowing or believing that it did not occur; or
- (4) Furnish law enforcement authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.
- (5) Any person who violates this Section commits a class 4 criminal offense.

5-3-106. Tampering with witnesses. It is unlawful to intentionally attempt to induce or induce a person to:

- (1) Testify or inform falsely during a hearing, official proceeding or investigation; or
- (2) Unlawfully withhold any evidence from a hearing, official proceeding or investigation; or
- (3) Avoid legal process summoning him to testify or supply evidence; or
- (4) Not appear at any hearing, official proceeding, or investigation to which he has been legally summoned; or
- (5) Intentionally harm another in retaliation for anything done by another in his capacity as a witness or informant; or
- (6) Intentionally solicit, accept, or agree to accept any benefit in consideration of his doing any of the things specified in this Section.
- (7) Any person who violates this Section commits a class 2 criminal offense.

5-3-107. Tampering with evidence. It is unlawful to:

- (1) Acting without legal authority, alter, destroy, conceal, or remove evidence with the intent to impair its veracity or availability in a hearing, official proceeding, or investigation; or

- (2) Knowingly make, present, or offer any false or altered physical evidence with the intent that it be introduced in the pending or prospective hearing, official proceeding, or investigation.
- (3) Any person who violates this Section commits a class 3 criminal offense.

5-3-108. Impersonating a peace officer or public official.

- (1) It is unlawful to falsely hold oneself out to be a peace officer or public servant and act in that pretended capacity.
- (2) Any person who violates this Section commits a class 4 criminal offense.

5-3-109. Retaliation against a judge or juror.

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

5-3-110. Obstructing governmental operations.

- (1) It is unlawful to intentionally obstruct, impair, or hinder the performance of a lawful governmental function by a public servant, by using or threatening to use violence, force, or physical interference or obstacle, except that this Section does not apply to flight by a person charged with a crime, or refusal to submit to arrest.
- (2) Any person who violates this Section commits a class 4 criminal offense.

5-3-111. Resisting arrest.

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

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

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

5-3-112. Obstructing justice. It is unlawful if, with the intent to hinder the apprehension, prosecution, conviction, or punishment of another for the commission of an offense, one:

- (1) Harbors or conceals the other; or
- (2) Provides or aids in providing money, a weapon, transportation, disguise or other means of avoiding apprehension of or effecting escape; or
- (3) Conceals or destroys evidence of the offense or tampers with a witness, informant, document or other source of information, regardless of its admissibility in evidence; or
- (4) Warns the other of impending discovery or apprehension except if such warning is given in an attempt to get the other person to comply with, the law; or
- (5) Gives false information to a law enforcement officer for the purpose of preventing the apprehension of another; or
- (6) Obstructs by force, threat, bribery, or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution, or conviction of another person.
- (7) Any person who violates this Section commits a class 3 criminal offense.

5-3-113. Escape.

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

5-3-114. Providing and possessing contraband.

- (1) It is unlawful to knowingly provide a person in official detention with alcoholic beverages, drugs, weapons, implements of escape, or any other thing

or substance that the offender knows is unlawful or improper for the detainee to possess.

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

5-3-115. Bail jumping.

- (1) It is unlawful if, having been released on bail or his own recognizance by court order or other lawful authority upon condition that he subsequently appear on charge of an offense, he fails without just cause to appear in person or in the case.
- (2) Any person who violates this Section commits a class 4 criminal offense.

5-3-116. Disobedience to court orders.

- (1) It is unlawful to knowingly disobey any order, subpoena, or jury summons issued by the Tribal Court.
- (2) Any person who violates this Section commits a class 5 criminal offense.

5-3-117. Violation of a protection order.

- (1) It is unlawful if, after being personally served with a protection order or having otherwise acquired actual knowledge of the contents of any such order from the court that issued the protection order, the person violates any provision of that protection order.
- (2) Any person who violates this Section commits a class 3 criminal offense.

5-3-118. Violation of an exclusion order.

- (1) It is unlawful to knowingly violate a lawful exclusion order of the Southern Ute Indian Tribe.
- (2) Any person who violates this Section commits a class 5 criminal offense.

5-3-119. Introduction of contraband.

- (1) It is unlawful if one is not an authorized peace officer acting within the proper course and scope of his employment and knowingly and unlawfully introduces or attempts to introduce into the Southern Ute Detention Center any contraband, malt, vinous or spirituous liquor, fermented malt beverage, drug

paraphernalia, any tool or instrument that could be used to cut fence or wire, gig, pry or file, any counterfeit or forged identification card, any mask, wig or disguise which could hinder identification of a person, or any combustible material.

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

ARTICLE 4. SEXUAL OFFENSES

5-4-101. Sexual Assault. It is unlawful for a person to knowingly inflict sexual intrusion or sexual penetration on a victim if:

- (1) The person causes submission of the victim by means of sufficient consequence reasonably calculated to cause submission against the victim's will; or
- (2) The person knows that the victim is incapable of appraising the nature of the victim's conduct; or
- (3) The person knows that the victim submits erroneously, believing the person to be the victim's spouse; or
- (4) At the time of the commission of the act, the victim is less than fifteen years of age and the person is at least four years older than the victim and is not the spouse of the victim; or
- (5) At the time of the commission of the act, the victim is at least fifteen years of age but less than seventeen years of age and the person is at least ten years older than the victim and is not the spouse of the victim; or
- (6) The victim is in custody of law or detained in a hospital or other institution and the person has supervisory or disciplinary authority over the victim and uses this position of authority to coerce the victim to submit, unless the act is incident to a lawful search; or
- (7) The person, while purporting to offer a medical service, engages in treatment or examination of a victim for other than a bona fide medical purpose or in a manner substantially inconsistent with reasonable medical practices; or
- (8) The victim is physically helpless and the person knows the victim is physically helpless and the victim has not consented; or

- (9) The person engages in sexual intrusion or penetration or sexual contact with a victim after having substantially impaired the victim's power to consent, resist, or reasonably appraise self-conduct by administering or employing without that person's consent or knowledge any drugs, intoxicants or other means to prevent resistance.
- (10) Any person who violates this Section commits a class 1 criminal offense.

5-4-102. Incest.

- (1) It is unlawful for a person to knowingly engage in sexual contact or sexual penetration with an ancestor, descendant, brother, or sister of the whole or half blood, stepchild, aunt, uncle, niece, nephew or first cousin or a child whom one has adopted.
- (2) Any person who violates this Section commits a class 4 criminal offense

5-4-103. Indecent exposure.

- (1) It is unlawful to knowingly expose one's genitals to another under circumstances in which such conduct is likely to cause affront or alarm to the other person with the intent to arouse or to satisfy the sexual desire of any person.
- (2) Any person who violates this Section commits a class 5 criminal offense.

5-4-104. Invasion of privacy for sexual gratification.

- (1) It is unlawful to knowingly observe or take a photograph or video of another person's intimate parts without that person's consent, in a situation where the person observed, photographed, or recorded has a reasonable expectation of privacy, for the observer's own sexual gratification.
- (2) Any person who violates this Section commits a class 5 criminal offense.

5-4-105. Sexual exploitation of a child.

- (1) It is unlawful to cause, induce, entice, or permit a child to engage in, or be used for, any explicit sexual conduct for the making of any sexually exploitative material or to cause, induce, entice, or permit a child to engage in, or be used for, any explicit sexual conduct to produce a performance.
- (2) Any person who violates this Section commits a class 3 criminal offense.

5-4-106. Sexual exploitation of a child by a parent, legal guardian, or person having custody or control of a minor.

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

5-4-107. Trafficking of child pornography.

- (1) It is unlawful to knowingly mail, transport, receive, distribute, reproduce, sell, or possess any sexually exploitative materials depicting children with the intent to sell, advertise, promote, or solicit by any means, including by electronic means, child pornography.
- (2) Any person who violates this Section commits a class 3 criminal offense.

5-4-108. Possession of child pornography.

- (1) It is unlawful to intentionally receive or knowingly possess any sexually exploitative materials depicting children.
- (2) Any person who violates this Section commits a class 3 criminal offense. Any person who violates this Section more than once commits a class 2 criminal offense. Any person under 18 years of age that violates this Section will be handled under the Juvenile Delinquency Code, except for severe circumstances of sexually exploitative material of children that is published or sent.

5-4-109. Human trafficking for sexual gratification.

- (1) It is unlawful to knowingly sell, recruit, harbor, transport, transfer, isolate, entice, provide, receive, or obtain by any means another person to coerce the person to engage in commercial sexual activity.
- (2) Any person who violates this Section commits a class 3 criminal offense. If the victim is a minor, the person who violates this Section commits a class 2 criminal offense.

5-4-110. Prostitution.

- (1) It is unlawful to perform, offer, or agree to perform any act of sexual contact with any person in exchange for money or other thing of value.
- (2) Any person who violates this Section commits a class 5 criminal offense.

5-4-111. Soliciting for prostitution.

- (1) It is unlawful to solicit another for the purpose of prostitution, or arrange or offer to arrange a meeting of persons for the purpose of prostitution, or direct another to a place knowing such direction is for the purpose of prostitution.
- (2) Any person who violates this Section commits a class 5 criminal offense

5-4-112. Keeping a place of prostitution.

- (1) It is unlawful to exercise control over the use of any place which offers seclusion or shelter for the practice of prostitution and knowingly grant or permit the use of such place or permit the continued use of such a place after becoming aware of facts or circumstances from which he should reasonably know that the place is being used for the purposes of prostitution.
- (2) Any person who violates this Section commits a class 5 criminal offense.

ARTICLE 5. OFFENSES AGAINST THE PERSON

5-5-101. Assault and battery. It is unlawful to:

- (1) Intentionally, knowingly, or recklessly cause bodily injury to another; or
- (2) Negligently cause bodily injury to another with a deadly weapon.
- (3) Any person who violates this Section commits a class 2 criminal offense.

5-5-102. Assault and battery on officer or other personnel.

- (1) **Peace officers or detention officers.**
 - (a) It is unlawful to intentionally, knowingly, or recklessly cause bodily injury to a peace officer or detention officer.
 - (b) Any person who violates this Section commits a class 1 criminal offense.

(2) **Other personnel.**

- (a) It is unlawful to intentionally, knowingly, or recklessly cause bodily injury, while lawfully confined or in custody, to a person employed by a detention facility, to a firefighter or emergency medical service provider engaged in the performance of his official duties, a judge, an officer of the court, or a person engaged in the performance of official duties while performing services for inmates and the person committing the offense knows or reasonably should know that the victim is such an employee.
- (b) Any person who violates this Section commits a class 1 criminal offense.

(3) **Other applicable offenses.**

- (a) It is unlawful to intentionally harass, annoy, threaten, intimidate, or alarm another person whom the actor knows or reasonably should know to be a peace officer or other personnel in subsection (2) by causing the other to come into contact with blood, seminal fluid, urine, feces, saliva, mucus, vomit, or toxic, caustic, or hazardous material by any means, including throwing, tossing, or expelling the fluid or material.
- (b) Any person who violates this Section commits a class 1 criminal offense.

5-5-103. Aggravated assault and battery. It is unlawful to:

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

5-5-104. Menacing.

- (1) It is unlawful to knowingly place or attempt to place another person in fear of imminent bodily injury.

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

5-5-105. Aggravated menacing.

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

5-5-106. Homicide.

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

5-5-107. Kidnapping.

- (1) It is unlawful to intentionally or knowingly take any person from one place to another, without the person's consent and without lawful justification.
- (2) Any person who violates this Section commits a class 2 criminal offense.

5-5-108. Aggravated kidnapping.

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

5-5-109. False imprisonment.

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

5-5-110. Violation of custody. It is unlawful to:

- (1) Knowingly take or entice any child under the age of 18 years without the privilege or legal authority to do so from the custody or care of the child's parents, guardian, or other lawful custodian or person with parental responsibilities; or

- (2) Violate any lawful tribal or state court order, granting custody or allocating parental rights and responsibilities for a child under the age of 18 years with the intent to deprive the lawful custodian of the custody or care of a child.
- (3) It shall be an affirmative defense either that the offender reasonably believed that his conduct was necessary to protect the child from danger, or that the child, being at the time more than 14 years old, was taken away at his own instigation without enticement and without purpose to commit a criminal offense with or against the child.
- (4) Any person who violates this Section commits a class 2 criminal offense.

5-5-111. Harassment.

- (1) It is unlawful to intentionally harass, intimidate, annoy, or alarm another person, by:
 - (a) Striking, shoving, kicking, touching, or subjecting one to physical contact; or
 - (b) Following a person in or about a public place; or
 - (c) Initiating communication with a person by telephone, computer, e mail, text message, or other electronic or data means, and threatens bodily injury or property damage, or makes any comment, request, suggestion, or proposal by any electronic or data means that is obscene; or
 - (d) Making a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or
 - (e) Making repeated communications at inconvenient hours that interferes in the use and enjoyment of another's home or private residence or other private property.
 - (f) Any act prohibited by subsections (c) - (e) of this Section may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail, or other electronic communication was either made or received.
 - (g) For this section, "obscene" means a patently offensive description of sexual acts or solicitation to commit sexual acts, whether or not the

sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus, or excretory functions.

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

5-5-112. Stalking.

- (1) It is unlawful for a person to knowingly and directly, or indirectly through another person:
- (a) Make a credible threat to another person and, in connection with such threat, repeatedly follows that person or a member of that person's immediate family; or
 - (b) Make a credible threat to another person and, in connection with such threat, repeatedly make any form of communication with that person or a member of that person's immediate family, whether or not a conversation ensues; or
 - (c) Repeatedly follow, approach, contact, place under surveillance, or make any form of communication with another person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship in a manner that would cause a reasonable person to suffer serious emotional distress and does cause such person to suffer serious emotional distress. For purposes of this subsection a victim need not show having received professional treatment or counseling to show having suffered serious emotional distress.
- (2) Any person who violates this Section commits a class 4 criminal offense. Any person who violates this Section more than once within seven years after the date of the prior offense for which the person was convicted commits a class 3 criminal offense.
- (3) **Sentence enhancer.** The following will enhance the class of offense one level if any of the following apply:
- (a) The defendant has previously been convicted in any state, tribal, or federal court of any crime of harassment, stalking, or similar statute of another jurisdiction;
 - (b) The stalking violates any protective order protecting the person being stalked;

- (c) The defendant was armed with a deadly weapon while stalking the person; or
 - (d) The victim is or was a law enforcement officer, judge, juror, attorney, victim advocate or children's advocate, Tribal Council members, or corrections officer, probation officer or staff and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties.
- (4) Acts may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail, or other electronic communication was either made or received.
- (5) The following definitions apply to this section:
- (a) **Credible threat** means a threat, physical action, or repeated conduct that would cause a reasonable person to be in fear for the person's safety or the safety of one's immediate family or of someone with whom the person has or has had a continuing relationship. The threat need not be directly expressed if the totality of the conduct would cause a reasonable person such fear.
 - (b) **Immediate family** means a person related as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law stepparent, stepchild, step-grandchild, brother-in-law or sister-in-law. Immediate family also includes family members through adoption, foster parents, or guardians.
 - (c) **Repeatedly** means on more than one occasion.
- (6) Any person who violates this Section commits a class 3 criminal offense.

5-5-113. Disorderly conduct.

- (1) It is unlawful to knowingly or recklessly:
- (a) Engage in fighting, threatening, or violent behavior in a public place;
 - (b) Make an offensively coarse utterance, gesture or display in a public place that tends to incite an immediate breach of the peace; or

(c) Be drunk or intoxicated or under the influence of a controlled substance at a religious or ceremonial activity designated by the Southern Ute Indian Tribal Council.

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

5-5-114. Disturbing the peace.

(1) It is unlawful to disturb or annoy any public or private or religious assembly, or make unreasonable noise in a public place or near a private residence that one has no right to occupy.

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

5-5-115. Reckless endangerment.

(1) It is unlawful to recklessly engage in conduct that creates a substantial risk of serious bodily injury to another person.

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

ARTICLE 6. PROPERTY OFFENSES

5-6-101. Arson. It is unlawful to:

(1) Start a fire or cause an explosion with the intent to destroy or damage another's building or occupied structure; or

(2) Destroy or damage any property whether his own or another's, with the intent to collect insurance for such loss.

(3) Any person who violates this Section commits a class 1 criminal offense.

5-6-102. Unlawful burning. It is unlawful to knowingly or recklessly:

(1) Start a fire or cause an explosion that endangers human life; or

(2) Damage property of another by use of fire; or

(3) Cause a fire, whether recklessly or not and knowing that it is spreading and will endanger the life or property of another, fail to take reasonable measures to put out or control the fire or fail to give a prompt fire alarm; or

- (4) Violate a fire ban or restriction that is in effect.
- (5) Any person who violates this Section commits a class 3 criminal offense.

5-6-103. Criminal mischief.

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

5-6-104. Defacing property.

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

5-6-105. Maintaining a public nuisance.

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

ARTICLE 7. DRUG OFFENSES

5-7-101. Unlawful possession or use of a controlled substance.

- (1) It is unlawful to possess or use a controlled substance if one knowingly possesses, manufactures, holds, controls, carries, or otherwise has in his custody or uses any quantity of a controlled substance.
- (2) The following exemptions apply to unlawful possession of a controlled substance:

- (a) The use, possession, or transportation of peyote for bona fide traditional ceremonial purposes in connection with the practice of a traditional Native American religion is lawful and shall not be prohibited.
 - (b) Peace officers or employees of federal, state, local, or tribal governments acting within the scope of their authorities;
 - (c) Practitioner authorized to prescribe any controlled substance that is manufactured, held, controlled, carried or otherwise in his custody in the course of his professional practice and under a DEA license or number issued in accordance with federal law; or
 - (d) Any person who, by virtue of a lawful permit or prescription, possesses marijuana for medical purposes; however, such possession must be specifically authorized by the permit and possession of any such substance that is not in compliance with any such permit shall be considered commission of the offense.
- (3) The burden of proof of any such exemption or exception is upon the person claiming it.
 - (4) Any person who violates this section commits a class 3 criminal offense.

5-7-102. Unlawful sale or distribution of a controlled substance.

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

5-7-103. Unlawful possession, distribution, or sale of drug paraphernalia.

- (1) It is unlawful to knowingly possess, distribute, or sell drug paraphernalia.
- (2) This offense does not apply to any person authorized by state, or federal, or tribal law to manufacture, possess, or distribute such items; or any item that,

in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with tobacco products, including any pipe, paper, or accessory. The burden of proof of any such exemption or exception is upon the person claiming it.

- (3) Any person who violates this Section commits a class 4 criminal offense.

5-7-104. Abuse of toxic vapors.

- (1) It is unlawful to knowingly cause intoxication, inebriation, excitement, stupefaction, or the dulling of one's brain or nervous system by:
 - (a) Inhaling the fumes of any toxic vapors; or
 - (b) Possessing, purchasing or attempting to possess or purchase any toxic vapors with the intent to violate this section; or
 - (c) Knowingly selling or offering to sell toxic vapors who the seller or offeror knows that person intends to misuse them in violation of this section.
- (2) For the purposes of this section, the term "toxic vapors" means but is not limited to the following substances or products containing such substances:
 - (a) Alcohols, including methyl, isopropyl, propyl, or butyl;
 - (b) Aliphatic acetates, including ethyl, methyl, propyl, or methyl cellosolve acetate;
 - (c) Acetone;
 - (d) Benzene;
 - (e) Carbon tetrachloride;
 - (f) Cyclohexane;
 - (g) Freons;
 - (h) Hexane;
 - (i) Methyl ethyl ketone;

- (j) Methyl isobutyl ketone;
 - (k) Naphtha;
 - (l) Perchlorethylene;
 - (m) Toluene;
 - (n) Trichloroethane; or
 - (o) Xylene.
- (3) In a prosecution for a violation of this section, evidence that a container lists one or more of the substances described in subsection (2) of this section as one of its ingredients is prima facie evidence that the substance in such container contains toxic vapors and emits those fumes.
- (4) Any person who violates this Section commits a class 3 criminal offense.

5-7-105. Unlawful possession, sale, or distribution of a date rape drug.

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

5-7-106. Unlawfully get controlled substance by fraud or deceit.

- (1) It is unlawful to obtain a controlled substance or procure the administration of a controlled substance by fraud, deceit, misrepresentation, or subterfuge; or by the forgery or alteration of an order; or by the concealment of a material fact; or by the use of a false name or the giving of a false address.
- (2) Information communicated to a practitioner in an effort to procure a controlled substance other than for legitimate treatment purposes or unlawfully to procure the administration of any such controlled substance is deemed not to be a privileged communication.
- (3) It is unlawful to willfully make a false statement in any order, report, or record required by this article.

- (4) It is unlawful, when obtaining a controlled substance, to falsely assume the title of, or represent himself to be, a manufacturer, distributor, practitioner, or other person authorized by law to obtain a controlled substance.
- (5) It is unlawful to make any false or forged order.
- (6) It is unlawful to affix any false or forged label to a package or receptacle containing a controlled substance.
- (7) Any person who violates this Section commits a class 3 criminal offense.

ARTICLE 8. OFFENSES AGAINST CHILDREN

5-8-101. Endangering the welfare of a child.

- (1) It is unlawful for a parent, guardian, or other person supervising the child to:
 - (a) Knowingly violate the duty of care; or
 - (b) Intentionally leave the child without appropriate care; or
 - (c) Neglectfully care for the child in any manner that threatens serious harm to the physical, emotional or mental well-being of the child; or
- (2) Any person who violates this Section commits a class 4 criminal offense.

5-8-102. Contributing to the delinquency of a minor.

- (1) It is unlawful to willfully, by action or omission, permit a child to violate the local state, federal, or tribal law, including status offenses.
- (2) Any person who violates this Section commits a class 4 criminal offense.

5-8-103. Child abuse. It is unlawful to:

- (1) Intentionally, knowingly, or recklessly cause a physical, emotional, or mental injury to a child; or
- (2) Intentionally, knowingly, recklessly, or through criminal negligence, cause physical, emotional, or mental injury to a child by failing to take action to provide the child food, clothing, shelter, or medical or dental treatment that a reasonably prudent person would provide.

- (3) A child's parent, legal guardian, or custodian who chooses and legitimately practices treatment by spiritual means, through treatment by a traditional medicine person or prayer, will not be considered to have injured or endangered the child and to be criminally liable solely because he fails to provide medical treatment for the child, unless such person inhibits or interferes with the provision of medical treatment for the child in accordance with a court order, or unless there is an additional reason to consider the child to be injured or endangered.
- (4) Any person who violates this Section commits a class 2 criminal offense.

5-8-104. Aggravated child abuse.

- (1) It is unlawful to intentionally, knowingly, or recklessly engage in a continued pattern of conduct, including but not limited to, malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries, that ultimately results in the death of or serious bodily injury to a child.
- (2) Any person who violates this Section commits a class 1 criminal offense.

ARTICLE 9. OFFENSES TO AT-RISK ADULTS AND ELDERS

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

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

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

- (a) Is legally required to provide care or services to an elder or at-risk adult;
 - (b) Assumes responsibility to provide care or services to an elder or at-risk adult; or
 - (c) Is paid to provide care or services to an elder or at-risk adult.
- (3) **Guardian.** A person at least 21 years of age appointed by a parent or a court who must provide for the custody and care of an incompetent elder or at-risk adult, including education and medical care, if needed or appropriate.

5-9-103. At-risk adult or elder abuse.

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

5-9-104. Caretaker neglect of at-risk adult or elder. It is unlawful for a caretaker or guardian to:

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

5-9-105. Exploitation of at-risk adult or elder.

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

5-9-106. Sentence enhancement. Any person who commits an offense against an elder or at-risk adult other than at-risk adult or elder abuse, caretaker neglect or (at-risk adult or

elder, or exploitation of at-risk adult or elder may be sentenced at an increased penalty classification of one class to a more serious offense for the respective offense.

ARTICLE 10. DOMESTIC VIOLENCE

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

- (1) **Dating Violence.** An act or attempted act of violence committed 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 the interaction between the persons involved in the relationship.
- (2) **Domestic Violence.** An act or attempted act of violence committed by a current or former spouse or current or former intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim.
- (3) **Intimate Partner.**
 - (a) A spouse or former spouse, a person who shares a child in common, or a person who cohabits or has cohabited as a spouse; or
 - (b) A person who is or has been in a social relationship of a romantic or intimate nature, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

5-10-102. Domestic violence and dating violence sentencing designation. This section provides for the designation of a crime as domestic violence or dating violence, which gives notice that the Tribe may seek additional conditions at sentencing. Any crime as defined by this Code is considered domestic violence or dating violence if committed against a current or former intimate partner and is subject to the provisions in this Code.

5-10-103. Classification. An offense designated as domestic violence or dating violence carries the same classification prescribed in which the offense is classified.

5-10-104. Violating a domestic violence protection order.

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

5-10-105. Obstruction of telephone use.

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

ARTICLE 11. LIQUOR OFFENSES

5-11-101. Illegal possession or consumption of an alcoholic beverage or marijuana by an underage person.

- (1) It is unlawful to possess or consume an alcoholic beverage while under the age of 21.
- (2) Any person who violates this Section commits a class 5 criminal offense subject only to a fine and substance abuse treatment. Multiple offenses may also require community service.
- (3) **Definitions.** For purposes of this Section the following definitions apply:

- (a) **Possess an alcoholic beverage** means that a person has or holds any amount of an alcoholic beverage anywhere on his person, or that a person owns or has custody of an alcoholic beverage, or has an alcoholic beverage within his immediate possession and control.
- (b) **Consume an alcoholic beverage** means that a person drinks or has drank any amount of an alcoholic beverage on the Reservation.

5-11-102. Unlawful possession of an open container.

- (1) It is unlawful, while in any public place, to possess or have in one's control an open container that holds any amount of alcoholic beverage.
- (2) Any person who violates this Section commits a class 5 criminal offense.

ARTICLE 12. ATTEMPT, ACCESSORY TO CRIME, AND CRIMINAL CONSPIRACY

5-12-101. Attempt.

- (1) It is unlawful, acting with the kind of intent otherwise required for the commission of an offense, to engage in conduct constituting a substantial step toward commission of the offense. It is no defense to the offense of attempt that the offense attempted was not actually committed due to factual or legal impossibility.
- (2) Any person who violates this Section commits the same class of criminal offense of the underlying offense.

5-12-102. Accessory to crime.

- (1) It is unlawful for one with intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a crime, one renders assistance to a person.
- (2) Any person who violates this Section commits a class 5 criminal offense.
- (3) Any person who violates this Section commits a class 4 criminal offense if the offender knows that the person being assisted has committed, or has been convicted of, or is charged by pending information, indictment, or complaint with a crime, and if that crime is designated by this Code as a class 1 or class 2 criminal offense.

5-12-103. Criminal conspiracy.

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

ARTICLE 13. WEAPONS OFFENSES

5-13-101. Possession of an illegal weapon.

- (1) It is unlawful to knowingly have in one's possession, control, or custody any illegal weapon without a valid federal permit for such weapon.
- (2) Any person who violates this Section commits a class 3 criminal offense.

5-13-102. Unlawful possession of a weapon on school grounds.

- (1) It is unlawful to bring or possess an illegal or deadly weapon in or on any school grounds within the exterior boundaries of the Reservation, except to present an authorized public demonstration or exhibition under instruction in conjunction with an organized school or class, to carry out the necessary duties and functions of a school or governmental employee that require using a weapon, or to participation in an authorized extracurricular activity or on an athletic team.
- (2) Any person who violates this Section commits a class 4 criminal offense.

5-13-103. Unlawful possession of a firearm.

- (1) It is unlawful to knowingly possess, use, or carry upon one's person a firearm subsequent to the person's conviction for a felony, under state or federal law, or a Southern Ute Class I offense involving the use of a deadly weapon, except if the previous offense has been expunged.
- (2) It is unlawful for a person to possess a firearm or ammunition if such person has been convicted of a crime of domestic violence in any court or if such person is subject to a court order from a court of competent jurisdiction

restraining such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except if the previous offense has been expunged.

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

5-13-104. Possession of a handgun by a juvenile.

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

5-13-105. Unlawfully carrying a concealed weapon.

- (1) It is unlawful to carry a firearm or knife with a blade over four inches concealed upon one's person without the legal authority to do so. For this

Section, a lawfully-issued concealed firearm permit from another jurisdiction does not constitute legal authority to carry a concealed firearm on the Southern Ute Indian Reservation, unless and until the permit has been filed with the Southern Ute Police Department.

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

5-13-106. Prohibited use of a weapon.

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

5-13-107. Careless use of a weapon.

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

ARTICLE 14. OFFENSES TO ANIMALS

5-14-101. Cruelty to animals. It is unlawful to knowingly, recklessly, or negligently:

- (1) Torture or seriously overwork an animal; or

- (2) Fail to provide necessary food, care, or shelter for an animal in one's custody;
or
- (3) Abandon an animal in one's custody; or
- (4) Transport or confine an animal in a cruel manner; or
- (5) Kill, injure or administer poison to an animal without legal privilege to do so;
or
- (6) Cause one animal to fight with another.
- (7) Any person who violates this Section commits a class 5 criminal offense. Any person who is a repeat offender that violates this Section more than once commits a class 4 criminal offense.
- (8) In addition to any other sentence imposed for a violation of this Section, the Court may order an offender to complete an anger-management treatment program or any other appropriate treatment program. The Court must order an evaluation to be conducted before sentencing to assist the Court in determining an appropriate sentence. The person ordered to undergo an evaluation must pay the cost of the evaluation, unless the person qualifies for a public defender, then the cost will be paid by the Court. If the evaluation results in a recommendation of treatment and if the Court so finds, the person will be ordered to complete an appropriate treatment program. Upon successful completion of the treatment program, the court may suspend any fine imposed, except for a \$500 mandatory minimum fine that will be imposed at the time of sentencing.

5-14-102. Failure to register dogs and cats.

- (1) It is unlawful to not register a dog and cat that one owns or is in one's possession according to this Code. No dog or cat will be registered unless there is a current valid certificate of rabies vaccination, and upon registration all animals shall be required to wear a rabies tag. Any dog or cat not so registered or not wearing a tag attached to a collar and found running at large may be picked up by the law enforcement officers and if not claimed within nine days may be disposed of.
- (2) Any person who violates this Section commits a class 5 criminal offense and upon conviction, the offender shall be sentenced to a term of imprisonment not to exceed ten days and a fine not to exceed \$50.00 plus the cost of extermination of the animal.

5-14-103. Livestock offense. It is unlawful for a person to:

- (1) Knowingly or recklessly refuse or fail to mark or brand his livestock when such is required in the interest of livestock identification or directed by tribal or governmental officials; or
- (2) Alters, obliterates, removes a brand or mark, or misbrands or mismarks livestock with the purpose of deceiving another for any reason; or
- (3) Knowingly permits his livestock to graze or trespass on the property of another or of the Tribe without permission to do so or in excess of the permitted time; or
- (4) Knowingly refuses to sell, dispose or otherwise remove sick or otherwise infectious livestock from common grazing areas or areas where there is substantial danger of infecting other livestock; or
- (5) Knowingly fails to treat or dispose of a sick animal where there is substantial danger of infecting other animals, or
- (6) Fails to dip, inoculate or otherwise treat livestock in the manner which the Tribal Council or its designated representative shall direct; or
- (7) Makes a false report of livestock owned; or
- (8) Purposely obstructs or interferes with a livestock roundup; or
- (9) Willfully or negligently allows livestock to occupy or graze on cultivated and enclosed lands of another or on tribal grazing areas without permission; or
- (10) Allows a stud to run at large.
- (11) Except in cases in which the owner or person having custody of livestock believed to be in violation of this section cannot be found after a reasonable search, no conviction shall be found for subsection 1, 3, 4, 5, or 6 set forth above unless the owner or person having custody of the livestock involved is given 48 hours' notice of his alleged violation and after such period of notice he has not remedied the alleged violation.
- (12) Livestock found to be in violation of this section may be impounded at the time an arrest is made; and may be impounded without prior notice to the owner if a court so orders upon receipt of evidence that such animals seriously

threaten the property of the Tribe, of another, or the health of other livestock on the reservation and that immediate action is necessary to protect such property from serious harm. A reasonable fee for the care of such animals may be collected prior to their release. If for health reasons such livestock must be destroyed, the court may order such destruction of animals pursuant to a certificate by a veterinarian. The Southern Ute Tribe or any of its agents shall not be held liable. The Tribe may auction animals which are unclaimed after due diligence in notifying owners, and may keep the proceeds of said sale or may apply the proceeds to defray the expense of damages caused by the impounded livestock, the cost of keeping said livestock and their sale.

- (13) All unbranded cattle over six months old are presumed to be the property of the Southern Ute Indian Tribe. The burden of proving otherwise shall be upon the person found in possession of such unbranded cattle on the reservation.
- (14) Any person who violates this Section commits a class 5 criminal offense and may be ordered to make restitution for damages caused by the livestock.
- (15) Persons who observe stock running loose in such a manner so as to obstruct a public highway or otherwise become a public nuisance must call the Southern Ute Indian Tribal Police immediately.

ARTICLE 15. MISCELLANEOUS OFFENSES

5-15-101. Fence cutting.

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

5-15-102. Waters offense. It is unlawful to:

- (1) Interfere with or alter the flow of water in any stream, river, ditch, canal or lateral without lawful authority to do so and in violation of the right of any persons; or
- (2) Knowingly break, injure, alter, or destroy any bridge, dam, canal, flume, aqueduct levee, embankment, reservoir or other structure intended to create hydraulic power or pressure or direct the flow of water, without lawful authority to do so; or

- (3) Take irrigation water out of turn or in excess amounts without lawful authority to do so and in violation of the right of any other person; or
- (4) Knowingly cause or allow any substance harmful or potentially harmful to human life to enter into a source of water for domestic purposes. If anyone is spraying in the ditches, there is a duty to notify the adjacent landowners and any others reasonably calculated to be adversely affected as the result of such spraying; or
- (5) Knowingly pollute or allow pollution known to be harmful to enter any stock tank, stock watering pond, or any water from which one knows or should know stock will be drinking.
- (6) Any person who violates this Section commits a class 5 criminal offense.

5-15-103. Violation of the timber use policy. It is unlawful to:

- (1) Fail to obtain from the authorized representative of the Tribe or the Superintendent, Bureau of Indian Affairs, the appropriate permit before cutting timber on the Southern Ute Indian Reservation; or
- (2) Violate the provisions or restrictions of any permit issued by the Tribe or the Superintendent, Bureau of Indian Affairs, for cutting timber on the Southern Ute Indian Reservation.
- (3) Any person who violates this Section commits a class 5 criminal offense and is subject to any other prescribed penalties, including revocation of all timber-cutting permits. And the Tribe may confiscate and you may forfeit all timber taken or possessed illegally, following seizure by the arresting officer upon probable cause, without liability to the Tribe. The arresting officer, if probable cause exists, may also seize any timber-cutting equipment used in the violation.

5-15-104. Abuse of process.

- (1) It is unlawful to repeatedly file complaints under the Southern Ute Indian Tribal Code and subsequently refuse to cooperate with tribal authorities.
- (2) Any person who violates this Section commits a class 5 criminal offense.

ARTICLE 16. PENALTIES

5-16-101. Criminal offense penalties.

- (1) Criminal offenses will be prosecuted and sentences imposed in accordance with the Tribe's Criminal Procedure Code and the schedule of criminal penalties that Tribal Council will adopt and may amend at any time by subsequent enacted resolutions.
- (2) For any criminal offense without a specific penalty under this Criminal Code, Tribal Court may impose a sentence up to seven days in jail or a fine up to \$200, or both. The Tribal Court may also award restitution to any victim.

5-16-102. Other remedies. The Tribal Court may award other remedial damages where appropriate.