



Walker River Paiute Tribe

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**RESOLUTION OF THE GOVERNING BODY
OF THE
WALKER RIVER PAIUTE TRIBE
RESOLUTION NO. WR-65-2021**

BE IT RESOLVED BY THE TRIBAL COUNCIL OF THE WALKER RIVER PAIUTE TRIBE THAT:

WHEREAS, the governing body of the Walker River Paiute Tribe ("Tribe") is organized under the provisions of the Indian Reorganization Act of June, 1934, as amended, to exercise certain rights of home rule and to be responsible for the promotion of the economic and social welfare of its members, and

WHEREAS, the Tribe's Constitution and By-Laws create the foundation for the governance of the Tribe and the framework for all Tribal operations and authorizes the Walker River Paiute Tribal Council to act on behalf of the Walker River Paiute Tribe and to promulgate ordinances for the purpose of safeguarding the peace and safety of residents of the Reservation, and

WHEREAS, pursuant to this power, the Tribal Council has created a Law & Order Code and other laws and ordinances to govern the conduct of people within the Tribe's jurisdiction, and

WHEREAS, the Tribal Council has recognized the importance of reviewing and updating the Law and Order Code to ensure the Code meets the Tribe's needs and best serves to protect the interests of the Tribe, its members and persons living, visiting and working on Tribal lands, and

WHEREAS, to meet this goal, the Tribal Council drafted a new Title 5 of the Law and Order Code titled "Code of Criminal Offenses", and

WHEREAS, the new proposed Title 5 was posted for at least thirty days to allow for public comment, the Tribal Council considered the comments and is now prepared to take action to approve Title 5, and

NOW THEREFORE BE IT RESOLVED, by the Walker River Tribal Council, the governing body of the Walker River Paiute Tribe, hereby adopts, approves and promulgates the attached

version of Title 5 titled "Code of Criminal Offenses" of the Tribe's Law and Order Code, which shall go into effect upon approval of the Bureau of Indian Affairs, and which shall supersede and replace any and all prior versions of Title 5, and


BE IT FURTHER RESOLVED, that the Walker River Tribal Council hereby directs that the Tribal Court make Title 5 of the Law and Order Code available to those Tribal members and attorneys/advocates who request a copy. The expense for each copy will be at the cost of the requester, and

BE IT FURTHER RESOLVED, that the Tribal Chairwoman or her designee is hereby authorized to effectuate any and all administrative actions necessary for the implementation of this resolution and the approved Title 5 of the Law and Order Code, and

BE IT FINALLY RESOLVED, that nothing in this resolution shall be construed as a waiver of the sovereign immunity of the Tribe.

CERTIFICATION

It is hereby certified that the foregoing resolution of the Walker River Paiute Tribal Council of the Walker River Paiute Tribe composed of seven members of whom 6, constituting a quorum were present at a Tribal Council meeting held on the 10th day of June, 2021 adopted the foregoing resolution by the affirmative vote of 5-FOR, 0-AGAINST, and 0-ABSTENTIONS; pursuant to the authority contained in the Constitution and By-Laws of the Walker River Paiute Tribe of Nevada.


Gina L. Wachsmuth, Tribal Council Secretary
WALKER RIVER PAIUTE TRIBE



Walker River Paiute Tribe
Tribal Court

Title 5 Code Of Criminal Offenses

Title 5 Approved by Walker River Tribal Council on June 10, 2021

Resolution No.: WR-65-2021

Effective: 6/14/2021

LAW AND ORDER CODE

TITLE 5 – CODE OF CRIMINAL OFFENSES

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LAW AND ORDER CODE
TITLE 5
CODE OF CRIMINAL OFFENSES

5-10 GENERAL PROVISIONS –

5-10-010 Name and Citation –

This title shall be known and cited as the “Walker River Paiute Tribe Code of Criminal Offenses,” and references in this title to “Code” shall refer to this Code unless another is clearly indicated.

5-10-020 Effective Date –

The effective date shall be the date on which this Code is approved by the Bureau of Indian Affairs. This Code shall apply to all offenses as defined herein occurring on or after the effective date. If all or any part of any offense was committed prior to the effective date, the offense shall be governed by the prior existing law except that defenses enumerated herein shall apply to all offenses tried after the effective date.

5-10-030 Exclusiveness of Offense –

No conduct constitutes a Tribal criminal offense unless so declared by this Code, or by any other provision of this Law and Order Code, or by any other Tribal resolution, or ordinance, or by federal law.

5-10-040 Included Offenses –

A defendant may be convicted of a lesser offense necessarily included in an offense charged in the complaint or of an attempt to commit either the offense charged, or an offense necessarily included therein if the attempt is an offense. A lesser offense is so included when:

- (a) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged;
- (b) It consists of an attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein; or
- (c) It differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.

5-10-050 Civil Liability Unaffected –

This Code does not change, suspend or otherwise affect any civil or other liability, other than criminal liability as defined herein, which would otherwise arise from any conduct defined herein.

5-10-060 Severability –

If any provision of this Code or the application of any provision of this Code to any

person or circumstance is held invalid, the remainder of this Code shall not be affected thereby.

5-20 **PRINCIPLES OF CRIMINAL RESPONSIBILITY –**

5-20-010 **Acts and Omissions to Perform an Act –**

- (a) A person is guilty of an offense when the person's guilt is based on conduct that includes a voluntary act, or the omission to perform an act of which he or she is physically capable.
- (b) A reflex or convulsion, a bodily movement during unconsciousness or sleep, conduct during a scientifically supportable condition of hypnosis, or a bodily movement that is otherwise not the product of the effort or determination of the actor are not voluntary acts within the meaning of this Section.
- (c) Guilt may not be based on an omission to act unless a duty to perform the omitted act is specifically imposed by this Code.

5-20-020 **Required Mental State –**

- (a) A person is guilty of an offense when the person's act was made intentionally, knowingly, recklessly, or negligently, as the law may require, with respect to each element of the offense, or unless the person's acts constitute an offense involving strict liability.
- (b) When the law provides that negligence suffices to establish an element of an offense, such element is also established if a person acts intentionally or recklessly. When recklessness suffices to establish an element, such element is also established if a person acts intentionally.

5-20-030 **Definitions of Required Mental State –**

- (a) Intentionally – A person acts intentionally with respect to an element of an offense if it is a person's conscious object to act as he is acting, or if a person is aware that a particular result will or may be caused by his conduct.
- (b) Knowingly (or knowing) – A person acts knowingly with respect to an element of an offense when the person is aware of his conduct or that the circumstances exist. A person acts knowingly with respect to the result of conduct described in this Code when the person is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence.
- (c) Recklessly - A person acts recklessly with respect to an element of an offense when the person consciously disregards a substantial and unjustifiable risk that a particular result will be caused by his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, his disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.
- (d) Negligently - A person acts negligently with respect to an element of an

offense when a person should be aware of a substantial and unjustifiable risk that a particular result will be caused by his conduct.

- (e) **Strict Liability** - Strict liability means that no particular mental state is required in the definition of the offense; commission of the act alone is sufficient.

5-20-040 Causal Relationship Between Conduct and Result –

- (a) Conduct is the cause of a result if:
 - (1) Without the conduct the result would not have occurred; and,
 - (2) any additional causal requirements imposed by this Code or the definition of the offense.
- (b) When a particular mental state is specified in conjunction with an element of an offense, proof of that element is not avoided because the actual result differs from that contemplated only in the respect that a different person or different property is affected or that the injury or harm caused is less than contemplated, or that the result involves the same kind of harm or injury as contemplated but the precise harm or injury was different or occurred in a different way, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

5-20-050 Ignorance or Mistake –

- (a) Ignorance or mistake as to a matter of fact is a defense only if the ignorance or mistake negates a specific mental state required to establish the offense, or if it is specifically provided that ignorance or mistake is a defense.
- (b) A belief that conduct does not legally constitute an offense is a defense only when the law defining the offense has not been published or reasonably made available prior to the actor's conduct.

5-20-060 Liability for Conduct of Another –

A person is guilty of an offense if the offense is committed by another person for whom he is legally responsible. A person is legally responsible for another if he causes an innocent or irresponsible person to engage in conduct, or if he is an accomplice of such other person in the commission of the offense.

5-20-070 Accomplice Liability –

- (a) A person is an accomplice of another person in the commission of an offense if, with the purpose of promoting or facilitating the offense, a person:
 - (1) Solicits such other person to commit it;
 - (2) Aids or agrees or attempts to aid such other person in planning or committing it; or
 - (3) Having a duty imposed by this Code to prevent the commission of the offense, the person fails to make a proper effort to do so.

- (b) A person who is legally incapable of committing a particular offense himself may be guilty as an accomplice unless such liability is inconsistent with the purpose of the law under which the person is charged.
- (c) A person is not an accomplice in an offense if the person terminates participation prior to the commission of the offense wholly depriving it of effectiveness, or gives timely warning to the police, or otherwise makes a proper effort to prevent the commission of the offense. In each instance however, the person must provide corroborating testimony and evidence in any prosecution of the other person for an offense under this Code.
- (d) An accomplice may be convicted on proof of the commission of an offense and of the accomplice's participation, even though the person who is claimed to have committed the offense has not been prosecuted for, or convicted of, the same or any other offense.

5-20-080 Corporations and Unincorporated Associations –

A person is legally responsible for any conduct the person performs or causes to be performed in the name of a corporation or unincorporated association or on its behalf, to the same extent as if it were performed in the person's own name or behalf. If a duty to act is imposed by law upon a corporation or unincorporated association, any agent of the corporation or association having primary responsibility for the discharge of the duty is legally responsible for a negligent omission to perform the required act, to the same extent as if the duty was imposed by law directly upon the agent.

5-30 DEFENSES –

5-30-010 Intoxication –

Intoxication is a defense only when it negates the mental state required for an element of an offense charged. When recklessness is an element of the offense, unawareness of a risk is not a defense when the unawareness is due to self-induced intoxication.

5-30-020 Duress –

It is a defense that the actor engaged in conduct charged to constitute an offense because the actor was coerced to do so by the use of, or threat to use, unlawful force against that person or another person, which a law-abiding person of reasonable firmness would have been unable to resist. It is no defense that a woman acted on a command of her husband, or a man on command of his wife, unless the circumstances amount to duress as defined above. The defense of duress is unavailable where the conduct constitutes a Class A offense involving bodily harm or the attempt of a Class A offense involving bodily harm.

5-30-030 Consent –

It is a defense that the victim consented to the offense charged, or to the result thereof, if the consent negates an element of the offense. However, consent is not a defense if the offense charged is a Class A offense involving bodily harm or the

attempt of a Class A offense involving bodily harm. Assent does not constitute consent if it is given by a person who, by reason of youth, mental disease or defect, or intoxication, is unable to make a reasonable judgment as to the nature or the harmfulness of the conduct charged to constitute the offense, nor if the assent is induced by force, duress or deception.

5-30-040 Entrapment –

- (a) A person is not guilty of an offense if a law enforcement officer induces, incites or encourages the person to engage in conduct constituting an offense for the purpose of obtaining evidence for the prosecution of that person. Entrapment is not available as a defense when the offense involved is a Class A offense involving bodily injury to a person other than the officer perpetrating the entrapment.
- (b) Except as provided in (a) above, a person prosecuted for an offense shall be acquitted if the person proves by a preponderance of the evidence that his conduct occurred in response to an entrapment. The issue of entrapment shall be tried to and decided by the Court and not by a jury.

5-30-050 Mental Disease or Defect –

- (a) In any prosecution for an offense, it shall be a defense that the defendant, at the time of the conduct upon which the prosecution is based, as a result of mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of the 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 antisocial conduct.
- (c) The defense afforded by this Section shall not be available unless notice of intent to rely on such defense is given at least two weeks before trial. By giving such notice, the defendant will be deemed to have consented to be examined for the prosecution by not more than two professional medical or other experts for the purpose of ascertaining the state of the defendant's mental health.
- (d) No person who, as a result of mental disease or defect, lacks the capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

5-30-060 Affirmative Defenses –

The defenses set forth in Sections 5-30-010 through 5-30-050 are affirmative defenses and shall be raised by motion at least twenty (20) days before the scheduled trial. The Tribe shall have ten (10) days to respond. The Court shall hold a hearing on any such motion at least seven (7) days prior to trial. The Court may at its discretion provide a different schedule for such motions.

5-30-070 Justification –

Justification is a defense when the defendant's conduct is reasonable and in fulfillment of his duties as a tribal officer or employee, is reasonable discipline of a minor by a parent, guardian, teacher, or other person in the position of a parent, or is reasonable discipline of persons in custody under this Code, or is necessary to prevent the commission of an offense under this Code.

5-30-080 Force in Defense of a Person –

- (a) A person is justified in threatening or using force against another person when and to the extent that the person reasonably believes force is necessary to defend himself or a third person against another person's immediate use of unlawful force. However, a person is justified in using force which is intended or likely to cause death or serious bodily injury only if the person reasonably believes that such force is necessary to prevent death or serious bodily injury to himself or a third person.
- (b) A person is not justified in using force under this Section if the person was the aggressor or was engaged in combat by consent unless the person has withdrawn from the encounter and effectively communicated his withdrawal to the other person.
- (c) A person is not justified in using force under this Section if the person initially provoked the use of force upon himself with the intent to use such force as an excuse to inflict harm on another, or if the person is attempting to commit, committing, or fleeing after the commission of an offense.
- (d) "Serious bodily injury" as used in this Code means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

5-30-090 Force in Arrest –

- (a) Any person is justified in using force, except force likely to cause death or serious bodily injury, to effect an arrest or to defend himself or another from bodily harm while making an arrest.
- (b) "Bodily injury" as used in this Code means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

5-30-100 Deadly Force by Law Enforcement Officer –

A law enforcement officer is justified in using deadly force when the officer is in the performance of his legal duty or the execution of legal process and reasonably believes the use of deadly force is necessary to prevent death or serious bodily injury to the officer or a third person.

5-30-110 Force in Defense of One's Dwelling –

A person is justified in using force against another person when and to the extent necessary to prevent or terminate the other person's entry into or attack upon his dwelling. A person may use force likely to cause death or serious bodily injury

only if it appears that the force is necessary as defined in Section 5-30-080(a) of this Code.

5-30-120 **Force in Defense of Property –**

A person is justified in using force, other than deadly force, to the extent the person reasonably believes such force is necessary to prevent or terminate criminal interference with real or personal property lawfully in his possession or in the possession of his immediate family, or belonging to a person whose property he has a legal duty to protect.

5-30-130 **Negating Defenses –**

The prosecution need not negate any defense either in the complaint or by proof unless the defense is in issue as a result of evidence presented at trial by either side, or unless the defense is an affirmative defense, and the defendant has presented evidence of such.

5-30-140 **Actions by Good Samaritan for Drug Overdose –**

(a) The following definitions shall apply to this Section:

- (1) “Health care professional” means a physician, a physician assistant or an advanced practice registered nurse.
- (2) “Opioid antagonist” means any drug that binds to opioid receptors and blocks or disinhibits the effects of opioids acting on those receptors. The term includes, without limitation, naloxone hydrochloride.
- (3) “Opioid-related drug overdose” means a condition including, without limitation, extreme physical illness, a decreased level of consciousness, respiratory depression, coma or death resulting from the consumption or use of an opioid, or another substance with which an opioid was combined, or that an ordinary layperson would reasonably believe to be an opioid-related drug overdose that requires medical assistance.

(b) Notwithstanding any other provision of law, a health care professional otherwise authorized to prescribe an opioid antagonist may, directly or by standing order, prescribe and dispense an opioid antagonist to a person at risk of experiencing an opioid-related drug overdose or to a family member, friend or other person in a position to assist a person at risk of experiencing an opioid-related drug overdose. Any such prescription must be regarded as being issued for a legitimate medical purpose in the usual course of professional practice.

(c) A person who, acting in good faith and with reasonable care, prescribes or dispenses an opioid antagonist pursuant to Subsection (b), is not subject to any criminal or civil liability or any professional disciplinary action for:

- (1) Such prescribing or dispensing; or

- (2) Any outcomes that result from the eventual administration of the opioid antagonist.
- (d) Notwithstanding any other provision of law:
 - (1) Any person, including, without limitation, a law enforcement officer, acting in good faith, may possess and administer an opioid antagonist to another person whom he or she reasonably believes to be experiencing an opioid-related drug overdose.
 - (2) A properly trained emergency medical technician, advanced emergency medical technician or paramedic is authorized to administer an opioid antagonist as clinically indicated.
- (e) A person who, acting in good faith and with reasonable care, administers an opioid antagonist to another person whom the person believes to be experiencing an opioid-related drug overdose is immune from criminal prosecution, sanction under any professional licensing statute and civil liability for such act.
- (f) The provisions of this section do not create any duty to prescribe or dispense an opioid antagonist. A person who declines to prescribe or dispense an opioid antagonist is not subject to any criminal or civil liability or any professional discipline for any reason relating to declining to prescribe or dispense the opioid antagonist.

5-40 INCHOATE OFFENSES -

5-40-010 Attempt -

- (a) A person is guilty of an attempt to commit an offense if, acting with the mental state required for the commission of the offense, the person engages in conduct constituting a substantial step towards commission of the offense.
- (b) It is not a defense to the offense of attempt that the consummation of the offense was impossible, as long as the offense could have been committed had the circumstances been as the actor believed them to be.
- (c) Attempt is a Class A offense if the attempted offense was a Class A offense, a Class B offense if the attempted offense was a Class B offense, a Class C offense if the attempted offense was a Class C offense, and is not an offense if the attempted offense was a Class D or E offense.

5-40-020 Criminal Conspiracy -

- (a) A person is guilty of conspiracy if the person agrees with one or more other persons to engage in conduct constituting an offense, and any one of them commits an overt act toward the commission of the agreed offense.
- (b) Conspiracy to commit a Class A offense is a Class A offense, conspiracy to commit a Class B offense is a Class B offense, conspiracy to commit a Class C offense is a Class C offense, and conspiracy to commit a Class D or E

offense is not an offense.

- (c) It is a defense to a prosecution for conspiracy if the actor shows by a preponderance of the evidence that the actor withdraws from the conspiracy in accordance with the conditions set forth in Section 5-20-070(c) of this Code.

5-40-030 Solicitation --

- (a) A person is guilty of solicitation when the person, intending that another person commit an offense, entices, advises, incites, orders, pays or otherwise encourages such other person to commit an offense.
- (b) Solicitation to commit a Class A offense is a Class A offense, solicitation to commit a Class B offense is a Class B offense, solicitation to commit a Class C offense is a Class C offense. Solicitation to commit a Class D or E offense is not an offense.

5-50 OFFENSES AGAINST THE PERSON --

A. Assault and Related Offenses --

5-50-010 Aggravated Assault --

- (a) A person is guilty of aggravated assault if the person:
 - (1) Intentionally or recklessly causes serious bodily injury to another under circumstances manifesting extreme indifference to the value of human life;
 - (2) Intentionally or recklessly causes the reasonable apprehension of bodily injury by use of a deadly weapon; or
 - (3) Permanently disfigures or renders useless a part of the victim's body.
- (b) Aggravated assault is a Class A offense.
- (c) No suspension of sentence, probation or parole shall be granted, and the maximum fine and incarceration for a Class A offense shall be imposed for an aggravated assault on a law enforcement officer in the performance of the officer's duties or committed upon an officer as a result of or in retribution for the performance of the officer's duties.

5-50-020 Simple Assault --

- (a) A person is guilty of simple assault if the person intentionally or recklessly causes bodily injury to another.
- (b) Simple assault is a Class B offense, unless committed in a fight entered into by mutual consent, in which case, it is a Class D offense.
- (c) No suspension of sentence, probation or parole shall be granted, and the maximum fine and incarceration for a Class B offense shall be imposed for a simple assault on a law enforcement officer in the performance of the officer's duties or committed upon an officer as a result of or in retribution for the

performance of the officer's duties.

5-50-030 Criminal Negligence –

- (a) A person is guilty of criminal negligence if the person negligently causes bodily harm to another human being.
- (b) Criminal negligence is a Class C offense.

5-50-040 Intimidation –

- (a) A person is guilty of intimidation if, with the purpose to cause another to perform or to omit the performance of any act, the person communicates to another, under circumstances which reasonably tend to produce fear that it will be carried out, a threat to perform without lawful authority any of the following acts:
 - (1) Inflict physical harm on the person threatened or any other person;
 - (2) Subject any person to physical confinement or restraint; or
 - (3) Any Class A or B offense.
- (b) A person is guilty of intimidation if the person knowingly communicates a threat or false report of a pending fire, explosion, or disaster that would endanger life or property.
- (c) Intimidation is punishable as the same class offense as the underlying offense threatened.

B. Criminal Homicide and Related Offenses –

5-50-050 Criminal Homicide –

- (a) A person is guilty of criminal homicide if the person intentionally, recklessly, or negligently causes the death of another human being.
- (b) Criminal homicide is a Class A offense.
- (c) If the offense is found to have been committed intentionally, no suspension of sentence, probation or parole shall be granted, and the maximum fine and incarceration shall be imposed.
- (d) If the offense occurred while the defendant was under the influence of alcohol or drugs as defined in Title 7 of the Law and Order Code, no suspension of sentence, probation or parole shall be granted, and the maximum fine and incarceration shall be imposed.

5-50-060 Vehicular Assault –

- (a) A person is guilty of vehicular assault if the person causes bodily injury to another while the person operates a vehicle in a reckless or negligent manner.
- (b) A person is presumed to have operated a vehicle in a reckless manner if, at the time of the offense, the person was under the influence of alcohol or drugs as defined in Title 7 of the Law and Order Code.

- (c) Any chemical test administered on a defendant with his consent, or after his arrest whether with or against his consent, shall be admissible in accordance with the rules of evidence. Notice of the intent of the prosecution to rely on the results of any chemical test administered on the defendant shall be sent to the defendant at least twenty (20) days prior to trial. The defendant shall have ten (10) days in which to notify the Court, in writing, of the defendant's objection to the use of the results of a chemical test.
- (d) For purposes of this Section, a motor vehicle is any self-propelled vehicle and includes, but is not limited to, any automobile, truck, van, motorcycle, train, engine, watercraft, aircraft or snowmobile.
- (e) Vehicular assault is a Class A offense.

C. Unlawful Restraint and Related Offenses –

5-50-070 Unlawful Restraint –

- (a) A person is guilty of unlawful restraint if the person intentionally:
 - (1) Restrains another person so as to interfere with that person's liberty; or
 - (2) Without consent, removes another person from his place or residence or business, or a place where he would otherwise be found.
- (b) Unlawful restraint is a Class A offense if it is done to hold another for ransom or reward, to use another as a shield or hostage, to facilitate commission of any offense or flight thereafter, to interfere with the performance of any tribal governmental or political function, if the restraint causes serious bodily harm to the victim, or if the restraint exposes the victim to a risk of serious bodily harm.
- (c) In all other cases, unlawful restraint is a Class B offense.

5-50-080 Custodial Interference –

- (a) A person, whether a parent or other person, is guilty of custodial interference if, without good cause, the person takes, entices, conceals, or detains a child under the age of eighteen (18) years from his parent, guardian, or other lawful custodian, knowing that the person has no legal right to do so, and with intent to hold the child for substantially longer than any visitation or custody period previously awarded by a Court of competent jurisdiction.
- (b) A person is guilty of custodial interference if, having actual physical custody of a child under the age of eighteen (18) years pursuant to a judicial award of a Court of competent jurisdiction that has given another person visitation or custody rights, the person detains or conceals the child with intent to deprive the other person of his lawful visitation or custody rights, without good cause to do so.
- (c) A person is guilty of custodial interference if, without good cause, the person takes, entices, or detains an incompetent or other person who has been committed by authority of law to the custody of another person or institution, from the other person or institution, knowing he has no legal right to do so.

(d) Custodial interference is a Class B offense.

D. Sexual Offenses –

5-50-090 Aggravated Sexual Assault –

(a) A person who engages in a sexual act with another person is guilty of aggravated sexual abuse if:

- (1) The person compels the other person to submit by force or by the threat of imminent death, serious bodily injury, extreme pain, or unlawful restraint to be inflicted on the other person or anyone else;
- (2) The person has substantially impaired the other person's power to appraise or control his or her conduct by administering or employing without the other person's knowledge drugs, intoxicants or other means for the purpose of preventing resistance;
- (3) The person knows that the other person suffers from a mental disease or defect which renders the other person incapable of appraising the nature of his or her conduct;
- (4) The other person is unconscious or the person knows that the other person is unaware that a sexual act is being committed upon him, or that the other person submits because he or she falsely supposes that the person is his or her spouse; or
- (5) The other person is sixteen (16) years of age or younger.

(b) "Sexual acts" as used in this Code means:

- (1) Contact between the penis and the vulva or the penis and the anus, with some penetration, however slight;
- (2) Contact between the mouth and penis, the mouth and vulva, or the mouth and anus; or
- (3) The penetration, however slight, of the anal or genital opening of another by hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person.

(c) Aggravated sexual abuse is a Class A offense.

5-50-100 Statutory Rape –

- (a) A person eighteen (18) years of age or older is guilty of statutory rape if he or she engages in a sexual act with a person sixteen (16) years of age or younger, with or without such minor's consent. However, the provisions of this subsection (a) shall not apply to conduct between spouses.
- (b) It is a defense for the offender to prove that he reasonably believed the victim to be above the age of sixteen (16). That belief shall not be deemed reasonable if the victim is less than fourteen (14) years old.

- (c) Statutory rape is a Class A offense.

5-50-110 Sexual Abuse –

- (a) A person is guilty of sexual abuse if he or she has sexual contact with another person against the will of such person.
- (b) "Sexual contact" as used in this Code means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.
- (c) Sexual assault is a Class B offense.

5-50-120 Indecent Exposure –

- (a) A person is guilty of indecent exposure if the person exposes his genitals to another person without the other person's consent.
- (b) Indecent exposure is a Class C offense.

5-50-130 Lewdness with Child –

- (a) A person is guilty of lewdness with a child if the person intentionally commits any lewd or lascivious act, other than acts constituting the crimes of aggravated sexual abuse or sexual abuse, upon or with the body, or any part or member thereof, of a child sixteen (16) years of age or younger with the intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person.
- (b) Lewdness with a child is a Class A offense.

5-50-140 Sexual Exploitation of a Child –

- (a) A person is guilty of sexual exploitation of a child if a person sexually exploits a child under the age of eighteen (18).
- (b) "Sexual contact" as used in this Code shall mean the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person. Additionally, "sexual contact" shall include the intentional masturbation of the perpetrator's genitals in the presence of a child.
- (c) "Sexual exploitation" as used in this Code shall mean:
 - (1) Conduct involving matter depicting a minor engaged in obscene acts. This includes the preparation, selling or distributing of obscene material involving a child under the age of eighteen (18) or the employment of a child under the age of eighteen (18) to perform obscene acts.
 - (2) A person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or a person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or

with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) A person who depicts a child in, or who knowingly develops, duplicates, prints, downloads, streams, accesses through any electronic or digital media, or exchanges, a film, photograph, videotape, video recording, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies.

(4) The sexual trafficking of a child under the age of eighteen (18).

(5) The provision of food, shelter, or payment to a child in exchange for the performance of any sexual act as described in this Code.

- (d) Consent by the child is not a defense to sexual exploitation of a child.
- (e) In a prosecution for sexual exploitation of a child, it is not a defense that the defendant did not have knowledge of the victim's age, nor is reasonable mistake of age a valid defense to such prosecution.
- (f) Sexual exploitation of a child is a Class A offense.

5-50-150

Pandering and Sex Trafficking: Definitions; Penalties -

(a) A person who without physical force or the immediate threat of physical force, induces an adult to unlawfully become a prostitute or to continue to engage in prostitution, or to enter any place within the Tribe's jurisdiction in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution is guilty of pandering. Pandering is a Class A offense. This subsection does not apply to the customer of a prostitute.

- (b) (1) A person is guilty of sex trafficking if the person:
 - (i) Induces, recruits, harbors, transports, provides, obtains or maintains a person by any means, knowing, or in reckless disregard of the fact, that threats, violence, force, intimidation, fraud, duress or coercion will be used to cause the person to engage in prostitution, or to enter any place within the Tribe's jurisdiction in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution;
 - (ii) By threats, violence, force, intimidation, fraud, duress, coercion, by any device or scheme, or by abuse of any position of confidence or authority, or having legal charge, takes, places, harbors, induces, causes, compels or procures a person to engage in prostitution, or to enter any place within the Tribe's jurisdiction in which prostitution is

practiced, encouraged or allowed for the purpose of sexual conduct or prostitution; or

(iii) Takes or detains a person with the intent to compel the person by force, violence, threats or duress to marry him her or any other person.

(2) A person found guilty of sex trafficking is guilty of a Class A offense.

(c) A court shall not grant probation to or suspend the sentence of a person convicted of sex trafficking.

(d) Consent of a victim of pandering or sex trafficking to an act of prostitution is not a defense to a prosecution for any of the acts prohibited by this section.

5-60 OFFENSES AGAINST THE FAMILY –

5-60-010 Incest –

(a) A person is guilty of incest if the person knowingly marries or cohabits or engages in sexual acts or sexual contact with a person that is an ancestor or descendant, brother, sister, aunt, uncle, nephew, niece, or first cousin, any of which are of the whole or half blood, without regard to legitimacy, adoption or step-parent/step-child relationship, while such relationship exists.

(b) Incest is a Class A offense.

5-60-020 Domestic Abuse –

(a) A person is guilty of domestic abuse if the person intentionally or recklessly:

(1) Causes bodily injury however slight to a family or household member;

(2) Causes reasonable apprehension of bodily injury to a family or household member; or

(3) Reasonable apprehension shall be presumed in any case in which a person points a firearm at or in the direction of a family or household member, whether or not the defendant believes the firearm to be loaded.

(b) For the purposes of this Section "family or household member" shall mean a spouse, former spouse, adult person related by blood or marriage, significant other, or an adult person residing, for more than five (5) days with the defendant or who formerly resided with the defendant.

(c) Sentences shall be imposed for domestic abuse as follows:

(1) First offense is a Class B offense.

(2) Second offense is a Class A offense.

(3) The Court shall impose the maximum sentence available for a Class A offense, without the possibility of parole, sentence reduction or probation, for a third or more offense.

(4) In addition, during sentencing, the Court may restrict defendant's access

to the Reservation in accordance with federal law.

- (d) A person convicted of domestic abuse shall be required to pay for and complete at least twenty-five (25) hours of counseling, directed toward the violent conduct of the convicted person, within six (6) months of sentencing or release from incarceration, whichever occurs later. Failure to complete the treatment program in the time period set forth shall constitute Criminal Contempt of Court.

5-60-030 Domestic Abuse – Probable Cause for Arrest –

- (a) A police officer may arrest without a warrant a person anywhere, including at the person's place of residence, if the police officer has probable cause to believe the person has committed the crime of domestic abuse although the abuse did not take place in the presence of the police officer.
- (b) A police officer acting in good faith and exercising due care in the making of an arrest pursuant to this Section shall have immunity from civil liability that otherwise might result by reason of the police officer's action.

5-60-040 Criminal Child Abuse –

- (a) A person is guilty of criminal child abuse if he causes physical or mental injury to a person under eighteen (18) years of age who is in the person's temporary or permanent care. Injury shall include any form of sexual abuse not covered elsewhere in this Code.
- (b) Criminal child abuse is a Class A offense.
- (c) Justification, as described in this Code, is a defense to a prosecution under this Section.

5-60-050 Criminal Child Neglect –

- (a) A person is guilty of criminal child neglect if the person is temporarily or permanently responsible for the welfare of a child under eighteen (18) years of age and endangers the child's welfare by intentionally, recklessly, or negligently leaving or abandoning the child, intentionally or recklessly failing to provide food or medical care, or otherwise intentionally, recklessly or negligently failing to care for the child in any manner that threatens serious harm to the physical or emotional well-being of the child.
- (b) Criminal child neglect is a Class A offense.

5-60-060 Criminal Non-Support –

- (a) A person is guilty of criminal nonsupport if the person fails to provide for the support of the person's spouse, children under eighteen (18) years of age, or other dependents when they are in need of such support.
- (b) Criminal nonsupport is a Class B offense.
- (c) It is a defense to a prosecution under this Section that the actor lacks the financial resources to support the actor's dependents due to unemployment,

ill health, or other similar reasons. However, the lack of financial resources is not a defense unless the actor can provide documentary proof of attempts at finding employment, applications for available social services, of ill health, or supporting similar reasons for failing to provide support.

5-60-070 Child Endangerment

- (a) A person is guilty of child endangerment if an individual through his or her actions or omissions puts a child in a place or position that exposes him or her to danger to life or health.
- (b) Child endangerment is a Class B offense.

5-60-080 Failure to Report Child Abuse or Neglect –

- (a) A person is guilty of failure to report child abuse or neglect if in the course of his employment as a mandatory reporter as stated below in Subsection (b), he intentionally or recklessly fails to report any instance of possible child abuse or neglect to a Tribal Police Officer or the Tribe's Social Services Department within a reasonable time, but not more than 24 hours.
- (b) Mandatory Reporters: An individual in the following positions is required to report child abuse or neglect as required by Subsection (a):
 - (1) Licensed medical provider, including but not limited to physician, physician assistant, nurse, dentist, physical therapist, chiropractor, podiatrist, optometrist, pharmacist, audiologist, psychologist, etc.
 - (2) Employees of a medical facility who are engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of such a medical facility upon notification of suspected abuse or neglect of a child by a member of the staff of the medical facility.
 - (3) Coroner.
 - (4) A member of the clergy, or religious healer, unless the person has acquired the knowledge of the abuse or neglect from the offender during a confession.
 - (5) Social worker.
 - (6) Marriage and family therapist, and clinical professional counselors.
 - (7) Alcohol, drug and family counselors.
 - (8) Any person licensed to conduct a foster home.
 - (9) A person working in a school who is licensed or endorsed pursuant to applicable law.
 - (10) Child care provider, including any person who maintains or is employed by a facility or establishment that provides care for children, children's camp or other public or private facility, institution or agency furnishing care to a child.

- (11) Any officer or employee of a law enforcement agency or an adult or juvenile probation officer.
- (12) Except as otherwise provided by applicable law or ethical rules, an attorney.
- (13) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding abuse or neglect of a child and refers them to persons and agencies where their requests and needs can be met.
- (14) Any person who is employed by a youth shelter.
- (15) Any adult person who is employed by an entity that provides organized activities for children.
- (16) The members of the Walker River Tribal Council.
- (17) Any Tribal employees who are mandatory reporters as stated in their job descriptions.

(c) Failure to report child abuse or neglect is a Class B offense.

5-60-090

Criminal Elder and Vulnerable Adult Abuse –

- (a) A person is guilty of elder or vulnerable adult abuse if the person (1) intentionally inflicts physical injury or pain, sexual abuse, mental anguish, unreasonable confinement, or intimidation on an elder or vulnerable adult, or (2) the willful deprivation to an elder or vulnerable adult by a court appointed guardian or a Caretaker of the basic necessities of life, such as but not limited to food, shelter, clothing, medical and personal care that are necessary to avoid physical harm, mental anguish or mental illness, or any other type of maltreatment, such as leaving an elder or vulnerable adult unattended for indefinite periods of time; or stealing or misappropriating money, checks, property, or other assets from an elder or vulnerable adult.
- (b) Criminal elder and vulnerable adult abuse is a Class A offense.
- (c) Justification, as described in this Code, is a defense to a prosecution under this Section.
- (d) No person shall be deemed to be abused for the sole reason they are being furnished nonmedical remedial treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment.
- (e) The following definitions shall apply to this Section and Section 5-60-100:
 - (1) “Caretaker” means a person who is required by Tribal or State law to provide services or resources to an elder or vulnerable adult; or a person who volunteers to provide services or resources to an elder or vulnerable adult; or an institution or agency and its employees who are required by Tribal, State or Federal law, or through any other agreement to provide services or resources to an elder or

vulnerable adult.

- (2) "Elder" means for this Section and Section 5-60-100 a person who is 55 years of age or older.
- (3) "Sexual abuse" is physical contact without the consent of an elder or vulnerable adult with the intent to derive sexual gratification by the person making contact. Consent may not be obtained by threat, coercion, intimidation or fraud; and
- (4) "Vulnerable Adult" means an adult who 18 years of age or older and is unable to protect himself/herself from abuse, neglect, exploitation, or physical harm; this includes the inability of the person to make responsible decisions for himself or herself because of mental illness or deficiency, physical disability or illness, age, or chronic use of alcohol or drugs. The person does not need to be incapacitated to be a vulnerable adult.

5-60-100

Failure to Report Elder or Vulnerable Adult Abuse or Neglect –

- (a) A person is guilty of failure to report elder or vulnerable adult abuse or neglect if in the course of the person's employment as a mandatory reporter as stated below in Subsection (b), the person intentionally or recklessly fails to report any instance of possible elder or vulnerable adult abuse or neglect to a Tribal Police Officer or the Tribe's Social Services Department within a reasonable time, but not more than 24 hours. Failure to report elder or vulnerable adult abuse or neglect is a Class C offense.
- (b) Mandatory Reporters: An individual in the following positions is required to report elder or vulnerable adult abuse or neglect as required by Subsection (a):
 - (1) The elder's or vulnerable adult's court appointed guardian or caretaker;
 - (2) Licensed medical provider, including but not limited to physician, physician assistant, nurse, dentist, physical therapist, chiropractor, podiatrist, optometrist, pharmacist, audiologist, psychologist, etc.;
 - (3) Employees of a medical facility who are engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of such a medical facility upon notification of suspected abuse or neglect of an elder or vulnerable adult by a member of the staff of the medical facility;
 - (4) Coroner;
 - (5) A member of the clergy, or religious healer, unless the person has acquired the knowledge of the abuse or neglect from the offender during a confession;
 - (6) Social worker;
 - (7) Marriage and family therapist, and clinical professional counselors;

- (8) Alcohol, drug and family counselors;
- (9) Any officer or employee of a law enforcement agency or a probation officer;
- (10) An attorney, except as otherwise provided by applicable law or ethical rules;
- (11) The members of the Walker River Tribal Council;
- (12) Any person or agency, including employees, with fiduciary duties to elders or vulnerable adults such as attorneys, accountants, property managers or financial institutions; and
- (13) Any Tribal employees who are mandatory reporters as stated in their job descriptions.

5-60-110

Unlawful Contact with Child or Person with Mental Illness –

- (a) A person who, without lawful authority, willfully and maliciously engages in a course of conduct with a child who is under 16 years of age and who is at least 5 years older than the person which would cause a reasonable child of like age to feel terrorized, frightened, intimidated or harassed, and which actually causes the child to feel terrorized, frightened, intimidated or harassed, commits the crime of unlawful contact with a child.
- (b) A person who, without lawful authority, willfully and maliciously engages in a course of conduct with a person with mental illness which would cause a person with mental illness of like mental condition to feel terrorized, frightened, intimidated or harassed, and which actually causes the person with mental illness to feel terrorized, frightened, intimidated or harassed, commits the crime of unlawful contact with a person with mental illness.
- (c) The penalties provided in this section do not preclude the victim from seeking any other legal remedy available.
- (d) A person who commits the crime of unlawful contact with a child or unlawful contact with a person with mental illness is guilty of a Class A offense.
- (e) As used in this section:
 - (1) “Course of conduct” means a pattern of conduct which consists of a series of acts over time that evidences a continuity of purpose directed at a specific person.
 - (2) “Person with mental illness” means a person who has any mental dysfunction leading to impaired ability to maintain himself or herself and to function effectively in his or her life situation without external support or a vulnerable adult as defined in a separate title of the Law and Order Code addressing protections for vulnerable adults.
 - (3) “Without lawful authority” includes acts that are initiated or

continued without the victim's consent. The term does not include acts that are otherwise protected or authorized by constitutional or statutory law, regulation or order of a court of competent jurisdiction.

5-70 OFFENSES AGAINST PROPERTY –

A. Property Destruction –

5-70-010 Arson –

- (a) A person is guilty of arson if the person intentionally starts a fire or causes an explosion for the purpose of destroying a structure or property.
- (b) "Structure" as used in this Code includes, but is not limited to, a house, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, vehicle, vehicle trailer, semitrailer, house trailer, railroad car, sleeping car, airplane, or place adopted for overnight accommodations of persons or for carrying on business.
- (c) A person is guilty of arson if the person intentionally starts a fire or causes an explosion for the purpose of destroying or damaging the person's own property or the property of another, to collect the insurance for such loss.
- (d) Arson is a Class A offense.

5-70-020 Reckless Burning –

- (a) A person is guilty of reckless burning if the person recklessly starts a fire or causes an explosion that endangers human life or damages the property of another, or having started a fire, whether recklessly or not, and knowing that it is spreading and may endanger the life or property of another, fails to take reasonable measures to put out the fire or give a prompt alarm.
- (b) Reckless burning is a Class B offense.

5-70-030 Criminal Mischief –

- (a) A person is guilty of criminal mischief if the person:
 - (1) Intentionally damages or destroys his property with the intention of defrauding an insurer in circumstances not amounting to arson;
 - (2) Intentionally or recklessly damages, defaces, or destroys the property of another person; or
 - (3) Intentionally or recklessly shoots or propels any object against a vehicle, airplane, boat, or train whether moving or standing.
- (b) Criminal mischief is a Class B offense, unless the actor's conduct causes a loss of less than one thousand dollars (\$1,000.00), in which case it is a Class C offense.

B. Burglary and Related Offenses –

5-70-040 Burglary –

- (a) A person is guilty of burglary if the person enters or remains in any structure, as defined in this Code at 5-70-010(b), house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, vehicle, vehicle trailer, semitrailer, house trailer, or railroad car, with intent to commit a Class A offense, or an offense defined in Section 5-70-080, unless the premises are at the time open to the public, or the actor has a legal right to enter.
- (b) Burglary is a Class A offense.

5-70-050 Trespass –

- (a) A person is guilty of aggravated trespass if the person intentionally or recklessly enters or remains on the property of another, and accomplishes such entry by an act of force or violence, or if the person intends to cause or causes annoyance or injury to any person thereon, or if the person intends to commit or commits another offense thereon.
- (b) Aggravated trespass is a Class C offense unless it results in bodily injury to another person in which case it is a Class B offense.
- (c) A person is guilty of trespass if the person intentionally or recklessly enters or remains on property when notice against entry is given by personal communication, by fencing or other enclosures, or by the posting of signs.
- (d) Trespass is a Class D offense.

5-70-060 Robbery –

- (a) A person is guilty of robbery if the person intentionally takes the property of another by means of force, violence, or threat of injury or force. The threat of injury or force may be immediate or future and may be directed toward the victim of the robbery, his property, or any other person in the victim's company at the time of the robbery. The victim must be present during the taking. The degree of force or the extent of the threat of injury is immaterial. If force is used merely as a means of escape, it does not constitute robbery.
- (b) Robbery is a Class A offense.

5-70-070 Theft –

- (a) A person is guilty of theft if the person intentionally obtains or exercises unauthorized control over the property of another with the purpose of depriving the other person thereof.
- (b) For purposes of this Section, "property" means anything of value, including real estate, tangible or intangible personal property, contract rights, interest in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, commodities of a public utility such as water, gas or electricity, trade or business secrets which the owner thereof intends to be

available only to persons selected by the owner, or any other right, object, labor or services valuable to the owner or provider.

- (c) For purposes of this Section, "purpose of depriving" means to have a conscious objective to withhold property permanently, or for so extended a period that a substantial portion of its value is lost, or to restore the property only upon payment of a reward or other compensation, or to dispose of the property under circumstances that make it unlikely that the owner will recover it unharmed.
- (d) Theft of property as provided in this Section shall be punishable as follows:
 - (1) If the value of the property involved is five hundred dollars (\$500.00) or more, the offense shall be a Class A offense.
 - (2) If the value of the property involved is one hundred dollars (\$100.00) or more, but less than five hundred dollars (\$500.00), the offense shall be a Class B offense.
 - (3) If the value of the property involved is less than one hundred dollars (\$100.00), the offense shall be a Class C offense.
 - (4) If no evidence as to the value of the property involved is presented and the value of such is not obvious without presentation of such evidence, and if it otherwise is proven that a theft offense under this Section has been committed, the offense shall be a Class D offense.

5-70-080 Buying or Receiving Stolen Property –

- (a) A person is guilty of buying or receiving stolen property if the person buys, receives, possesses or withholds stolen goods, or anything the stealing of which is declared to be theft, or property obtained by burglary or robbery:
 - (1) Knowing that the goods or property were so obtained; or
 - (2) Under such circumstances as should have caused a reasonable person to know that the goods or property were so obtained.
- (b) Buying or receiving stolen property is a Class B offense.

C. Forgery and Fraudulent Practices –

5-70-090 Forgery –

- (a) A person is guilty of forgery if, with the purpose of defrauding or injuring anyone, or with the knowledge that he is helping to defraud or injure anyone, the person:
 - (1) Alters any writing of another without the other's authority;
 - (2) Makes, completes, executes, authenticates, issues, or transfers any writing; or
 - (3) Circulates as genuine any writing which the person knows to be forged.
- (b) Forgery shall be punishable as follows:

- (1) If the value of the writing involved or the amount of damage caused by the fraud is five hundred dollars (\$500.00) or more, the offense shall be a Class A offense.
- (2) If the value of the writing involved or the amount of damage caused by the fraud is one hundred dollars (\$100.00) or more, the offense shall be a Class B offense.
- (3) If the value of the writing involved or the amount of damage caused by the fraud is less than one hundred dollars (\$100.00), or if no evidence as to the value is presented and the value is not obvious without presentation of such evidence, the offense shall be a Class C offense.

5-70-100 Criminal Simulation –

- (a) A person is guilty of criminal simulation if, with the intent of defrauding or injuring anyone, or with the knowledge that the person is helping to defraud or injure anyone, the person makes, alters, circulates or sells as genuine, any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess.
- (b) Criminal simulation shall be punishable as follows:
 - (1) If the claimed value of the object involved or the amount of damage caused by the fraud is five hundred dollars (\$500.00) or more, the offense shall be a Class A offense.
 - (2) If the claimed value of the object involved or the amount of damage caused by the fraud is one hundred dollars (\$100.00) or more, the offense shall be a Class B offense.
 - (3) If the claimed value of the object involved or the amount of damage caused by the fraud is less than one hundred dollars (\$100.00), or if no evidence as to the value is presented and the value is not obvious without presentation of such evidence, the offense shall be a Class C offense.

5-70-110 Tampering with Records and Other Documents –

- (a) A person is guilty of tampering with records or other documents if the person falsifies, destroys, removes, or conceals any official record, will, deed, mortgage, security agreement, or similar document.
- (b) A person is guilty of tampering with records or other documents if the person knowingly records a false or forged document, with the purpose of deceiving or injuring anyone or to conceal a wrongdoing.
- (c) Tampering with records or documents is a Class C offense.

5-70-120 Issuing Bad Checks –

- (a) A person is guilty of issuing bad checks if the person intentionally issues or passes a check or similar sight order for the payment of money for the purpose of obtaining any money, property, or other thing of value or paying for any services, rent, wages or salary, knowing or believing that it will not be

honored by the drawee.

- (b) For the purposes of this Section, as well as any prosecution for theft committed by means of a bad check, an issuer is presumed to know that the check or order (other than a post-dated check or order) would not be paid if:
 - (1) the issuer had no account with the drawee at the time the check or order was issued; or
 - (2) payment was refused by the drawee for lack of funds upon presentation for payment within thirty (30) days of issue, and the issuer thereafter failed or was intentionally unavailable to make good within ten (10) days after such refusal and receipt of notice thereof.
- (c) Issuing bad checks shall be punishable as follows:
 - (1) If the value of the check or a series of checks issued over a period not exceeding six (6) months, is five hundred dollars (\$500.00) or more, the offense shall be a Class A offense.
 - (2) If the value of the check or a series of checks issued over a period not exceeding six (6) months is one hundred dollars (\$100.00) or more, the offense shall be a Class B offense.
 - (3) If the value of the check or a series of checks issued over a period not exceeding six (6) months is less than one hundred dollars (\$100.00), or if no evidence as to the value is presented and the value is not obvious without presentation of such evidence, the offense shall be a Class C offense.

5-70-130

Fraudulent Use of Credit Cards –

- (a) A person is guilty of fraudulent use of a credit card if the person uses a credit card for the purpose of obtaining property or services with knowledge that:
 - (1) The card is stolen;
 - (2) The card has been revoked or cancelled; or
 - (3) For any other reason the person's use of the credit card is unauthorized by either the issuer or the person to whom the card has been issued.
- (b) Fraudulent use of credit cards shall be punishable as follows:
 - (1) If the value of the transaction or a series of transactions over a period not exceeding six (6) months, is five hundred dollars (\$500.00) or more, the offense shall be a Class A offense.
 - (2) If the value of the transaction or a series of transactions over a period not exceeding six (6) months is less than one hundred dollars (\$100.00) or more, the offense shall be a Class B offense.
 - (3) If the value of the transaction or a series of transactions over a period not exceeding six (6) months is less than one hundred dollars (\$100.00), or if

no evidence as to the value is presented and the value is not obvious without presentation of such evidence, the offense shall be a Class C offense.

5-70-140 Deceptive Business Practices –

- (a) A person is guilty of deceptive business practices if the person:
 - (1) Uses or possesses a false weight or measure;
 - (2) Sells or offers for sale less than the represented quality or quantity of any commodity or service;
 - (3) Takes or attempts to take more than the represented quantity of any commodity or service when, as buyer, he furnishes the weight or measure;
 - (4) Sells or offers to sell an adulterated product; or
 - (5) As a seller or buyer, does any other act with the intention of defrauding someone.
- (b) Deceptive business practices are a Class B offense.

5-70-150 Rigging a Contest –

- (a) A person is guilty of rigging a contest if the person intentionally engages in conduct that will prevent a publicly exhibited contest from being conducted in accordance with the rules and usage purported to govern it.
- (b) Rigging a contest shall be punishable as follows:
 - (1) If the damage caused by rigging the contest is five hundred dollars (\$500.00) or more, the offense shall be a Class A offense.
 - (2) If the damage caused by rigging the contest is one hundred dollars (\$100.00) or more, the offense shall be a Class B offense.
 - (3) If the damage caused by rigging the contest is less than one hundred dollars (\$100.00), or if no evidence as to the value is presented and the value is not obvious without presentation of such evidence, the offense shall be a Class C offense.

5-70-160 Defrauding Creditors –

- (a) A person is guilty of defrauding creditors if the person:
 - (1) Intentionally destroys, removes, conceals, encumbers, or otherwise transfers property with the intention of hindering enforcement of a security interest;
 - (2) Intentionally destroys, removes, conceals, encumbers, or otherwise transfers property with the intention of avoiding payment of a judgment or execution upon a judgment;
 - (3) Intentionally falsifies any writing or record relating to property against

which a creditor holds a security interest; or

(4) Intentionally misrepresents or refuses to disclose the amount or location of property to a person entitled to administer said property.

(b) Defrauding creditors is a Class B offense.

5-70-170

Unlawful Dealing with Property by a Fiduciary –

(a) A person is guilty of unlawful dealing with property by a fiduciary if the person deals with the property that has been entrusted to him as a fiduciary, or property of the Tribe or government, in a manner the person knows is a violation of his duty and which involves:

(1) a substantial risk of loss to the or to a person for whose benefit the property was entrusted; or

(2) a pecuniary gain beyond that to which the fiduciary is by agreement entitled for the benefit of the fiduciary or any person other than the person for whose benefit the property was entrusted.

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

(c) Unlawful dealing with property by a fiduciary is a Class A offense.

5-70-180

Making a False Credit Report –

(a) A person is guilty of making a false credit report if the person knowingly makes a materially false or misleading statement to obtain property or credit for the person or another, or to keep some other person from obtaining credit.

(b) Making a false credit report is a Class B offense.

5-70-190

Identity Theft –

(a) Except as otherwise provided in Subsection (b), a person is guilty of identity theft who knowingly:

(1) Obtains any personal identifying information of another person; and

(2) With the intent to commit an unlawful act, uses the personal identifying information:

(i) To harm that other person;

(ii) To represent or impersonate that other person to obtain access to any personal identifying information of that other person without the prior express consent of that other person;

(iii) To obtain access to any nonpublic record of the actions taken, communications made or received by, or other activities or transactions of that other person without the prior express consent of that other person; or

- (iv) For any other unlawful purpose, including, without limitation, to obtain credit, a good, a service or anything of value in the name of that other person.
- (b) Identity theft is a Class B offense. However a person who commits identity theft:
 - (1) By obtaining and using the personal identifying information of an older person or a vulnerable person;
 - (2) By obtaining and using the personal identifying information of five or more persons; or
 - (3) By causing another person to suffer a financial loss or injury of \$1,000 or more as a result of the violation, shall be punished for a Class A offense.
- (c) In addition to any other penalty, the court shall order a person convicted of violating subsection (a) to pay restitution, including, without limitation, any attorney's fees and costs incurred to:
 - (1) Repair the credit history or rating of the person whose personal identifying information the convicted person obtained and used in violation of Subsection (a); and
 - (2) Satisfy a debt, lien or other obligation incurred by the person whose personal identifying information the convicted person obtained and used in violation of Subsection (a).

5-70-200 Restitution --

In the absence of good cause to the contrary, or upon conviction of any offense against property under this Title 5-70, the Judge shall order restitution in addition to the sentence imposed.

5-80 OFFENSES AGAINST THE ADMINISTRATION OF GOVERNMENT --

A. Bribery and Corrupt Influences --

5-80-010 Bribery in Official Matter --

- (a) A person is guilty of bribery in official matters if the person offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:
 - (1) Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a tribal or governmental officer or employee, or as an official of a party or faction or as a voter;
 - (2) Any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or
 - (3) Any benefit as consideration for a violation of a known duty as a tribal

or governmental officer or employee or party official.

- (b) It is not a defense to prosecution under this Section that a person whom the actor sought to influence was not qualified to act in the desired way whether because the person had not yet assumed office, lacked jurisdiction, or for any other reason.
- (c) Bribery in official matters is a Class A offense.

5-80-020 Improper Influence in Official Matters –

- (a) A person is guilty of improper influence in official matters if the person harms or threatens harm to any public servant including, but not limited to, tribal officials or judges, or to the relatives of public servants with the purpose of obtaining special treatment, influencing a decision, opinion, recommendation, or other exercise of discretion.
- (b) Retaliation for past official conduct shall be included as a form of improper influence.
- (c) Improper influence is a Class A offense.

5-80-030 Compensation for Past Official Behavior –

- (a) A person is guilty of compensation for past official behavior if:
 - (1) The person solicits, accepts or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in another person's favor; or
 - (2) The person offers, confers or agrees to confer compensation acceptance of which is prohibited by this Section.
- (b) Compensation for past official behavior is a Class B offense.

5-80-040 Improper Gifts to Public Servants –

- (a) A person is guilty of improper gifts to public servants if:
 - (1) Being a public servant in any department or agency exercising regulatory functions, or conducting inspections or investigations, or carrying on civil or criminal litigation on behalf of the Tribe or government, or having custody of prisoners, the person solicits, accepts or agrees to accept any valuable benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated;
 - (2) Being a public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other valuable transactions of the Tribe or government, the person shall solicit, accept or agree to accept any valuable benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transaction;

- (3) Being a public servant having judicial, legislative, or administrative authority, or being a public servant employed by or in a court or other tribunal having such authority, or being involved in the enforcement of such a tribunal's decisions, the person shall solicit, accept or agree to accept any valuable benefit from a person known to be interested in or likely to become interested in any matter before such public servant or tribunal with which he is associated; or
 - (4) The person knowingly confers or offers or agrees to confer any benefit prohibited by this Section.
- (b) This Section shall not apply to:
- (1) Fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives lawful consideration or to which the person is otherwise entitled;
 - (2) Gifts honorarium or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the receiver; or
 - (3) Trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.
- (c) Improper gifts to public servants are a Class C offense.

B. Abuse of Office –

5-80-050 Official Misconduct –

- (a) A person is guilty of official misconduct if, as a tribal official or employee, the person:
- (1) Intentionally commits an unauthorized act that purports to be an act of the person's office, or intentionally refrains from performing a non-discretionary duty imposed on the person by law, for the purpose of benefiting himself or others;
 - (2) Is charged with the receipt, safekeeping, transfer or disbursement of public money and the person appropriates the money or any portion thereof to the person's own use or the use of another, or otherwise handles public money in a manner not authorized by law or the duties of the person's employment;
 - (3) Intentionally or negligently fails to perform any mandatory duty required by law or by a court of competent jurisdiction; or
 - (4) Performs an act in the person's official capacity knowing or having a reasonable belief the conduct is illegal.
- (b) For purposes of this Section, "public money" means all money, bonds and evidences of indebtedness or their equivalent belonging to or received or held by the Tribe or any other government, or any account or money held by the Tribe or government for any individual or group.

- (c) Official misconduct is a Class A offense.
- (d) The Court may, in addition to the imposition of a sentence for a Class A offense, disqualify the actor from holding public office upon proof by a preponderance of the evidence that the actor personally profited in any way by his misuse of public money as defined herein.

5-80-060 Unofficial Misconduct –

- (a) A person is guilty of unofficial misconduct if the person exercises or attempts to exercise any of the functions of a public official when the person has not been elected or appointed to the office, has not filed the required bond, has not filed the required oath, continues to act as an official after the person's term of office has expired, or intentionally withholds or retains from successors, or intentionally destroys, any records, papers or documents pertaining to the person's office.
- (b) It is a defense to a charge of unofficial misconduct that the person charged reasonably believed he was authorized to act as a public official.
- (c) Unofficial misconduct is a Class B offense.

5-80-070 Special Influence –

- (a) A person is guilty of special influence if the person:
 - (1) Solicits, receives, or agrees to receive any pecuniary benefit as consideration for exerting special influence upon a public servant, or procuring another to do so.
 - (2) Offers, confers, or agrees to confer any pecuniary benefit, receipt of which is prohibited by this Section.
- (b) Special influence is a Class B offense.

C. Falsification of Official Matter –

5-80-080 Perjury –

- (a) A person is guilty of perjury if, in any official proceeding, the person intentionally 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.
- (b) No person shall be convicted of an offense under this Section where proof of falsity rests solely upon contradiction by the testimony of a single person other than the defendant.
- (c) No person shall be guilty of an offense under this Section if the person retracted the falsification in the course of the proceeding in which it was made.
- (d) Perjury is a Class A offense.

5-80-090 Making False Reports –

- (a) A person is guilty of making false reports if the person intentionally or knowingly:
 - (1) Gives false information to a law enforcement officer with the intention of misleading such officer in the performance of the officer's official function;
 - (2) Makes a false statement not under oath, swears, or affirms the truth of such a statement previously made, when the falsification was intended to mislead a public official, or occurred in an official proceeding; or
 - (3) Causes a false fire alarm or other emergency alarm to be transmitted to or within any organization for dealing with emergencies involving danger to life or property.
- (b) Making false reports is a Class B offense.

D. Obstructing Governmental Operations –

5-80-100 Interfering with the Judicial Process –

- (a) A person is guilty of interfering with the judicial process if the person attempts to induce or otherwise cause another person to testify falsely or to withhold information, testimony, documents or things from the Court.
- (b) A person is guilty of interfering with the judicial process if the person harms another person in retaliation for anything done by the other person in his capacity as a Court officer, Court employee, witness, or informant.
- (c) A person is guilty of interfering with the judicial process if the person solicits, accepts or agrees to accept any benefit in consideration for the person doing any of the things specified in this Section.
- (d) A person is guilty of interfering with the judicial process if the person alters, destroys or conceals any record, document or thing with the purpose of impairing its availability as evidence, or presents any record, document or thing knowing it to be false, with the intent of misleading the Court.
- (e) Interfering with the judicial process is a Class A offense.

5-80-110 Interfering with the Governmental Process –

- (a) A person is guilty of interfering with the governmental process if the person intentionally or knowingly:
 - (1) Makes a false entry in, or false alteration of, any record, document or book kept by the Tribe;
 - (2) Makes, presents, or uses any false record, document or thing with the purpose that it be taken as genuine; or
 - (3) Destroys, conceals or removes any record, document or thing belonging to the Tribe, unless duly authorized by the Tribal Council.

(b) A person is guilty of interfering with the governmental process if the person uses force, violence or intimidation with the intent to interfere with a public servant performing an official function.

(c) Interfering with the governmental process is a Class B offense under subparagraph (a) above and a Class A offense under subparagraph (b) above.

5-80-120 Interfering with Law Enforcement Procedures –

(a) A person is guilty of interfering with law enforcement procedures if the person intentionally obstructs, impairs, or hinders the enforcement of the criminal law, the preservation of the peace or the performance of a governmental function.

(b) It is no defense to a prosecution under this Section that the law enforcement officer was acting in an illegal manner, provided that the officer was acting under the color of official authority.

(c) Interfering with law enforcement procedures is a Class C offense.

5-80-130 Refusing to Aid a Law Enforcement Officer –

(a) A person is guilty of refusing to aid a law enforcement officer if the person intentionally refuses to cooperate with a reasonable order of the officer to aid the officer in the performance of an official duty.

(b) Refusing to aid an officer is a Class C offense.

5-80-140 Escape –

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

(b) A person is guilty of escape if the person:

- (1) Aids another person to escape from official detention;
- (2) Knowingly provides a person in official detention with anything that may facilitate such person's escape; or
- (3) Being a person in official detention, the person knowingly procures, makes or possesses anything that may facilitate escape.

(c) Escape is:

- (1) A Class B offense if the detainee was under arrest for or detained on a charge of a Class A offense or following conviction for any offense;
- (2) A Class A offense if the escapee employs force, threat, deadly weapon or other dangerous instrumentality to affect the escape;

- (3) A Class A offense if a public servant concerned with detention of persons purposely facilitates or permits an escape from a detention facility; or
- (4) A Class C offense for all other cases.

5-80-150 Bail Jumping –

- (a) A person is guilty of bail jumping if, having been released on bail or on the person's own recognizance by Court order or other lawful authority upon condition that the person subsequently appear on a charge of an offense, the person fails without good cause to appear in person at the time and place that has been lawfully designated for the person's appearance.
- (b) Bail jumping is an offense of the next lower degree as the offense originally charged for which the actor was released, or, if more than one (1) offense was charged, for the highest degree of such offenses, but not less than a Class D offense.

5-80-160 Doing Business Without a License –

- (a) A person is guilty of doing business without a license if the person commences or carries on any business, trade, profession or calling that is required by Tribal law to be licensed without having an appropriate license.
- (b) Doing business without a license is a Class D offense.

5-80-170 Tampering or Destroying Public Property –

- (a) A person is guilty of tampering with or destroying public property if the person intentionally injures or destroys any book, record, document, building, marker or any other tangible property, real or personal, that belongs to the Tribe or any public or governmental agency of the Tribe.
- (b) Tampering or destroying Public Property shall be punishable as follows:
 - (1) If the value of the property is five hundred dollars (\$500.00) or more, the offense shall be a Class A offense.
 - (2) If the value of the property is one hundred dollars (\$100.00) or more, the offense shall be a Class B offense.
 - (3) If the value of the property is less than one hundred dollars (\$100.00), or if no evidence as to the value is presented and the value is not obvious without presentation of such evidence, the offense shall be a Class C offense.

5-80-180 Failure to Obey a Lawful Order of the Court –

- (a) A person is guilty of failure to obey a lawful order of the Court if the person intentionally fails to obey an order, subpoena, warrant or command duly made, issued or given by the Tribal Court or any officer thereof, or otherwise issued according to law.
- (b) This Section does not apply to failure to appear as a party in a civil action

where default or similar remedy is available to the other party.

(c) Failure to obey a lawful order of the Court is a Class C offense.

5-90 OFFENSES AGAINST PUBLIC ORDER, DECENCY, & HEALTH AND SAFETY –

A. Breaches of the Peace and Related Offenses –

5-90-010 Disorderly Conduct –

(a) A person is guilty of disorderly conduct if the person:

- (1) Engages in conduct that creates a substantial risk of causing bodily harm to any person;
- (2) Intentionally disrupts a meeting, procession or other gathering of people, or makes any utterance, gesture or display designed to outrage the sensibilities of the group or prevent the assembly from conducting its business; or
- (3) Refuses or knowingly fails to obey an order to disperse or leave the immediate vicinity given by a police officer or other public servant performing a law enforcement function at the scene of an accident or fire, or given in the course of executing or enforcing a law, or given in the course of a criminal investigation.

(b) Disorderly conduct involving conduct that creates a substantial risk of causing bodily harm is a Class B offense.

(c) All other forms of disorderly conduct are a Class C offense.

5-90-020 Disturbing the Peace –

(a) A person is guilty of disturbing the peace if the person:

- (1) Intentionally disturbs the peace or quiet of any neighborhood or person, or family by loud or unusual noises, or by tumultuous and offensive conduct, threatening, traducing, quarreling, challenging to a fight, or fighting; or
- (2) Continues to harass, intimidate, question, or request money or other forms of assistance from customers of any business after being requested by the operator of the business to leave the premises or cease such activities.

(b) Disturbing the Peace is a Class C offense.

5-90-030 Loitering at a Public Place Where Children Congregate –

(a) A person is guilty of loitering at a place where children congregate if the person, without legitimate reason to supervise any children or other legitimate reason to be at leisure in such place, loiters about any school or public place at or near which children attend or normally congregate.

(b) Loitering at a public place where children congregate is a Class C offense.

5-90-040 Making a False Report –

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

5-90-050 Harassment –

- (a) A person is guilty of harassment if, with purpose to annoy or alarm another, the person:
 - (1) Makes a telephone call without purpose of legitimate communication;
 - (2) Insults, taunts, or challenges another in a manner likely to provoke a violent or disorderly response;
 - (3) Makes repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language; or
 - (4) Engages in any other course of conduct serving no legitimate purpose of the actor that the person knows tends to seriously annoy or alarm another.
- (b) Harassment is a Class C offense.

5-90-060 Stalking –

- (a) Definitions:
 - (1) "Credible threat" means a verbal or written threat, or a threat implied by a pattern of conduct, or combination of such verbal/written statements and conduct, either directly or through a third party, made with the intent to place the person who is the target of the threat in reasonable fear of his/her safety. The main standard for establishing a credible threat is the victim's perception of a threat to his/her safety. The second criteria will be the apparent ability of the defendant to carry out the threat, whether verbal, written, or implied through a willful pattern of conduct. The third standard is the ability to identify and relate a pattern of corroborated stalking behavior.
 - (2) "Harass" means a knowing and willful pattern of conduct directed at a specific person, either directly or through a third party, which seriously alarms, annoys, torments, or terrorizes the person, and which serves no legitimate purpose. A "legitimate purpose" includes but is not limited to acts that are otherwise protected or authorized by Constitutional or statutory law or regulation, order of a court of competent jurisdiction, or other lawful authority. Harassing behavior can include but is not limited to:

- (i) Vandalism;
 - (ii) Annoying or threatening telephone calls;
 - (iii) Following or other violations of an order for protection;
 - (iv) Actual Assaults;
 - (v) Sending unwanted letters;
 - (vi) Sending unwanted messages or threats through third parties;
 - (vii) Showing up at a victim's home or workplace;
 - (viii) Attempting to obtain private information about the victim through others;
 - (ix) Leaving gifts for the victim;
 - (x) Disabling or otherwise tampering with the victim's vehicle;
 - (xi) Taking mail from the victim's mailbox;
 - (xii) Entering the victim's home or place of residence whether the victim is there or not there;
 - (xiii) Parking near or driving by the victim's residence or workplace for no legitimate reason; and
 - (xiv) Using agencies or institutions in a manner that constitutes a pattern of conduct consistent with retaliation or harassment, by initiating investigations, restrictions or sanctions against the victim.
- (3) "Pattern of conduct" means conduct which has caused the victim to suffer substantial emotional distress or fear. This course of conduct should contain a series of acts carried out by the defendant over a period of time, however short, which demonstrates a continuity of purpose (i.e., to annoy, harass, follow, etc.), and which would cause a reasonable person to suffer like emotional distress or fear.
- (4) "Family" means any spouse, parent, child, stepparent, stepchild, grandparent, grandchild, or significant other person or relative with whom the victim has a familial relationship, or who resides with the victim or any other relationship as defined in Domestic Violence Title, Section 13-10-030(b).
- (5) "Corroborating stalking conduct" means any evidence of harassing behavior, physical evidence at the scene, records, documents, letters, unsubstantiated alibis, recorded messages, police reports, prior stalking convictions, witness information, or any other information, which would indicate a willful pattern of conduct or threat.

- (b) **Stalking; Offense defined and penalties.**
- (1) Any person who, either directly or through a third party, willfully, maliciously and repeatedly harasses another person, and who is perceived to constitute a credible threat and, by such perception places a person in reasonable fear of his/her safety, or the immediate safety of his/her family, shall be deemed guilty of stalking under this Section. Any person convicted of stalking shall be punished for a Class C offense. Any victim of stalking is entitled to a protection order against the stalker.
 - (2) Any person convicted of a second or subsequent stalking offense, within five (5) years of a prior stalking offense, shall be punished for a Class B offense.
 - (3) A person commits the crime of aggravated stalking if the person, in conjunction with committing the crime of stalking, threatens another person with the intent to cause the other person to be placed in reasonable fear of death or substantial bodily injury. Aggravated stalking is a Class A offense.
- (c) **Location of stalking perpetrator not bar to prosecution**
- (1) Any harassing or threatening behavior by the perpetrator, which meets the criteria of a credible threat, accomplished either directly or through a third party, and as corroborated through admission, witness testimony, telephone records, postal marks, or order/delivery records as being initiated outside the boundaries of the Reservation, will not bar prosecution under this Section. The behavior or conduct shall be considered to be a credible threat when full transmittal of the threat has been completed to the victim, when said victim is within the boundaries of the Reservation.
 - (2) Corroborated initial or intervening acts, used to establish a pattern of conduct for the purpose of probable cause under this Section, but which occurred outside the boundaries of the Reservation, may be used to establish and corroborate said stalking conduct for prosecution of a violation under this Section. However, individual initial or intervening acts occurring outside the boundaries of Reservation are not prosecutable as separate offenses under this Section.
 - (3) The present incarceration of the person making the threat shall not bar prosecution under this Section.

5-90-070 Misuse of Communications Device --

- (a) A person is guilty of misuse of a communications device if he uses a telephone, cellular phone, computer or other electronic device with the intent of harassing and/or using obscene language to another and without the purpose of legitimate communication.

(b) Misuse of a communications device is a Class C offense.

5-90-080

Desecration –

- (a) A person is guilty of desecration if the person purposely desecrates any public monument, structure, place of worship, sacred site or cemetery.
- (b) For purposes of this Section, “desecrate” means defacing, damaging, polluting or otherwise physically mistreating one of the above things in a way that the actor knows or believes will insult the sensibilities of the persons likely to observe or discover his action.
- (c) Desecration is a Class C offense.

5-90-090

Cruelty to Animals –

- (a) A person is guilty of cruelty to animals if the person intentionally or knowingly:
 - (1) Tortures or seriously overworks an animal;
 - (2) Fails to provide necessary food, water, care or shelter for an animal in his custody;
 - (3) Abandons an animal in his custody;
 - (4) Transports or confines an animal in a cruel manner;
 - (5) Kills, injures or administers poison to an animal without legal privilege to do so; or
 - (6) Causes one animal to fight with another.
- (b) It is a defense to prosecution under this Section that the conduct of the actor toward the animal was an accepted veterinary practice.
- (c) Cruelty to animals is a Class C offense.

5-90-100

Violation of Privacy –

- (a) A person is guilty of violation of privacy if, except as authorized by law, the person:
 - (1) Trespasses on property with intent to subject anyone to eavesdropping or other surveillance in a private place;
 - (2) Installs or utilizes any device for observing, photographing, videotaping, recording or eavesdropping in or outside of any private place without the consent of the person or persons who have a reasonable expectation of privacy there; or
 - (3) Intercepts a message by telephone, telegraph, letter or other communication without the consent of the sender or the receiver.
- (b) Violation of privacy is a Class C offense.

5-90-110

Criminal Defamation –

- (a) A person is guilty of criminal defamation if the person knowingly and with malicious intent communicates to any person orally or in writing any information the person knows or should know to be false and knows that the information tends to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive and thereby expose him to public hatred, contempt or ridicule. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown by way of defense.
- (b) It shall be a defense to criminal defamation that the person making the publication was at the time engaged in the formal broadcast or publication of news by some public means or media of communication and in good faith believed the reporting was a newsworthy event with a basis in truth.
- (c) Criminal defamation is a Class C offense.

5-90-120

Criminal Nuisance –

- (a) A person is guilty of criminal nuisance if the person:
 - (1) Recklessly interferes with or alters the flow of water in any stream, river, ditch, canal, or lateral;
 - (2) Recklessly breaks, injures, alters or destroys any bridge, dam, canal, flume, or other structure for the control of water without lawful authority to do so;
 - (3) Negligently causes or allows any substance harmful or potentially harmful to persons, animals or plants to enter into a source of water used for drinking or other domestic or farm purposes;
 - (4) Recklessly obstructs or tends to obstruct any lake, stream, canal, road, public park or highway; or
 - (5) Intentionally, recklessly or negligently maintains a condition that endangers safety or health, is offensive to the senses or obstructs the free use and enjoyment of property by the community or neighbors.
- (b) Criminal nuisance is a Class C offense.

5-90-130

Intoxication –

- (a) A person is guilty of intoxication if, under circumstances not amounting to disorderly conduct, the person is under the influence of an intoxicating beverage, drug or other controlled substance, or a substance having the property of releasing vapors, to a degree that the person may endanger himself or another in a public place or in a private place where the person unreasonably disturbs another person.
- (b) For the first offense, intoxication is a Class C offense.
- (c) For the second offense, intoxication is a Class B offense.

- (d) For each subsequent conviction, Intoxication is a Class B offense, and the offender may have their access to the Reservation restricted and/or limited to ingress and egress to his or her residence on the Reservation.

5-90-140

Protective Custody –

- (a) A person who is found in any public place in such condition that the person is unable to exercise care for his or her own health or safety, or the health or safety of others, which condition may be a result of being under the influence of alcohol, drugs, other controlled substance, or other apparent mental condition, may be placed in protective custody by a law enforcement officer.
- (b) A law enforcement officer may use upon the person identified in subsection (a) above, the degree of force necessary to effect an arrest for a Class B offense.
- (c) If a licensed facility for the treatment of the person identified in subsection (a) above is reasonably available to receive the person, a law enforcement officer shall deliver the person to the facility for observation and care. If a facility is not reasonably available, the person shall be placed in a detention facility for shelter or supervision of his or her own health and safety until the person is able to exercise care for his or her own health and safety.
- (d) In no instance shall a person be placed in protective custody pursuant to this Section for a period longer than seventy-two (72) hours without a hearing before the Court.
- (e) A person under the influence of alcohol, drugs or other intoxicant who is taken into custody by a law enforcement officer for an offense under this Code, shall immediately be taken to an appropriate licensed facility or medical facility if the person's condition appears to require immediate medical treatment. Upon release from such facility, the person shall be immediately remanded to the custody of the apprehending law enforcement department and criminal proceedings shall proceed as proscribed by law.
- (f) The placement of a person in protective custody shall be recorded at the facility to which the person is delivered and shall be communicated to the person's family or next of kin, if they can be located, at the earliest possible time. Notification shall also be made to the Tribal Substance Abuse Counselor and the Tribal Social Service Program at the earliest possible time.
- (g) Every law enforcement officer or other public employee or agency or the Tribe acting pursuant to this Section is performing a discretionary function or duty on the part of the Tribe and shall, in no manner be interpreted as a waiver of the Tribe's immunity from suit.
- (h) This Section shall not apply to any driver apprehended or arrested for the offense of driving a vehicle under the influence of intoxicating liquor or a controlled substance, pursuant to Title 7 of the Walker River Tribal Law and Order Code.
- (i) This Section does not make intoxication an excuse or defense for any criminal

act except as provided in this Code.

5-90-150 Possession of Alcoholic Beverage by Person Under Twenty-One (21) Years of Age—

- (a) A person is guilty of possession of an alcoholic beverage by a person under twenty-one (21) years of age if, being under the age of twenty-one (21) years old, the person:
 - (1) Possesses or consumes any beer, wine, ale, whiskey or other alcoholic beverage;
 - (2) Misrepresents his age for the purpose of buying or otherwise obtaining an alcoholic beverage; or
 - (3) Appears in a public or private place while under the influence of an intoxicating beverage in any degree.
- (b) Possession of an alcoholic beverage by a person under twenty-one (21) years of age is a Class C offense.

5-90-160 Contributing to the Delinquency of a Minor —

- (a) A person is guilty of contributing to the delinquency of a minor if the person is eighteen (18) years of age or over and sells, gives or otherwise makes beer, liquor, wine or other alcoholic beverages available to a person under the age of twenty-one (21) years, or if the person sells, gives or otherwise makes available to a person under the age of twenty-one (21) years a controlled substance, as specified in Section 5-90-230, without a prescription from a doctor or other person licensed to prescribe medicine, or if the person recklessly, by act of omission, encourages, causes or contributes to the commission of any offense by a person under twenty-one (21) years of age.
- (b) For a first offense, contributing to the delinquency of a minor is a Class C offense.
- (c) For a second offense, contributing to the delinquency of a minor is a Class B offense.
- (d) For any subsequent offenses, contributing to the delinquency of a minor is a Class A offense.

5-90-170 Abandoned Iceboxes, Refrigerators and Other Containers —

- (a) A person is guilty of abandoning an icebox, refrigerator or other container who has on his premises, or discards on the premises of another an abandoned chest, refrigerator, icebox or other container not in active use, the attached door to which has a latch or lock which automatically fastens upon the door being closed and which cannot be readily opened from the inside.
- (b) Abandoning an icebox, refrigerator or other container is a Class C offense.

5-90-180 Littering —

- (a) A person is guilty of littering if the person throws, dumps, places or deposits

upon the land of another, upon any tribal or public property, upon any highway, street, road, or upon any other area not his own, without the consent of the owner or other lawful permission, any garbage, debris, junk, carcasses, trash, refuse or other substance of any nature whatsoever that would mar the appearance or detract from the cleanliness of the area.

- (b) Littering is a Class E offense. If a person is convicted of littering more than once in a twelve (12) month period, the second and any subsequent convictions shall be Class D offenses.

5-90-190 Unlawful Burning of Waste –

- (a) A person is guilty of unlawfully burning of waste if the person intentionally sets fire to any personal property or waste on any land without a license or permit from the Tribal government.
- (b) Unlawful burning of waste is a Class D offense. If a person is convicted of unlawfully burning waste more than once in a twelve (12) month period, the second and any subsequent convictions shall be a Class C offenses.
- (c) The Court shall have discretion to increase the class of offense by one class (ex. Class C offense to a Class B offense) if the Court determines that the unlawful burning of waste created a substantial risk of harm to individuals, animals, buildings, or land.

5-90-200 Dangerous Discharge of Fireworks –

- (a) A person is guilty of dangerously discharging fireworks if the person ignites, shoots, throws, launches a firework within twenty-five (25) feet of a building of any type. Additionally, a person is guilty of dangerously discharging fireworks if the person ignites, shoots, throws, or launches a firework that at any point after ignition explodes, detonates, sparks, or combusts within twenty-five (25) feet of a building of any type.
- (b) Dangerous Discharge of Fireworks is a Class C offense. If a person is convicted of dangerously discharging fireworks more than once in a twelve (12) month period, the second and any subsequent convictions shall be a Class B offenses.
- (c) The Tribal Council has the right to designate an area for the discharge of fireworks and designate a time period when fireworks may be discharged. If the Tribal Council has designated such an area or time period, any violations of those designations is a Class D offense.

5-90-210 Unlawful Fishing or Hunting

- (a) A person is guilty of unlawful fishing or hunting if the person is identified fishing or hunting on Tribal lands without a permit or license administered by the Tribal government.
- (b) Unlawful fishing or hunting is a Class D offense. If a person is convicted of unlawfully fishing or hunting more than once during a twelve (12) month period, the second and any subsequent convictions shall be a Class C offense.

5-90-220

Failure to Comply with Tribal Directives During Emergencies

- (a) A person is guilty of the crime of failure to comply with Tribal directives during an emergency if:
 - (1) The Tribal Council declares a state of emergency,
 - (2) During the state of emergency, the Tribal Council adopts or enacts an order, declaration, resolution or directive to address the emergency; and
 - (3) A person intentionally fails to comply with any such Tribal Council order, declaration, resolution or directive after being directed to comply by a law enforcement officer.
- (b) Failure to comply with a Tribal directive during emergencies is a Class A offense.

B. Dangerous Weapons, Firearms and Related Offenses –

5-90-230

Definitions –

- (a) As used in this Code, “firearm” shall mean a pistol, revolver, rifle, shotgun, and any device that is capable of being used as a weapon because of its capability to propel a projectile by means of explosive, spring, gas, air, or other force.
- (b) As used in this Code, “dangerous weapon” shall mean any item that, in the manner of its use or intended use, is capable of causing death or serious bodily injury. In determining whether an item, object or thing not commonly known as a dangerous weapon is a dangerous weapon, the character of the instrument, object or thing, the character of the wound produced, if any, and the manner in which the instrument, item, or thing was used shall be determinative.

5-90-240

Weapons Offenses –

- (a) A person shall be guilty of a weapons offense if:
 - (1) Being addicted to alcohol or any controlled substance as defined in this Code, or having been declared mentally incompetent, the person owns or has in his possession or under his custody or control a dangerous weapon;
 - (2) Being intoxicated or otherwise under the influence of alcoholic beverages or other intoxicating substance, drug or medicine, the person has a dangerous weapon in his possession or under his custody or control;
 - (3) The person carries a loaded firearm in a vehicle on a public road without lawful authority to do so;
 - (4) The person carries a loaded firearm in a federal or Tribal building,

including any building owned or operated by a Tribal entity; but this provision shall not apply to Tribal police officers, sheriff's deputies, constables, marshals, or peace officers;

- (5) The person possesses a dangerous weapon with intent to assault another person;
- (6) The person discharges any kind of firearm from a motor vehicle without lawful authority to do so;
- (7) The person discharges a firearm from, upon, or across any public highway without lawful authority to do so;
- (8) Being under the age of sixteen (16) years, the person possesses a firearm without the consent of his parent or guardian; or
- (9) The person carries concealed any explosive substance, other than fixed ammunition, any dirk, dagger, or dangerous knife, or any pistol, revolver, or other firearm or dangerous or deadly weapon.
 - i. This provision shall not apply to Tribal police officers, sheriff's deputies, constables, marshals, peace officers, other duly appointed police officers or persons having permission from the Tribal Chief of Police as provided in Subsection (9)(ii).
 - ii. The Tribal Chief of Police may upon written application by an individual showing the reason or the purpose for which the concealed weapon is to be carried, grant permission to the applicant in accordance with the Tribal Police Department's policies and procedures, authorizing a person to carry, in the Tribe's jurisdiction, the concealed weapons described in the permit. In no event shall a concealed weapon be carried inside any federal or Tribal building, including inside any building owned or operated by a Tribal entity. Employees may not carry concealed weapons during work hours or while on duty, except authorized Tribal police officers in accordance with the Tribal Police Department's policies and procedures. This provision does not create in any person an enforceable right to obtain permission from the Tribal Chief of Police to carry a concealed weapon.

At a minimum, the Tribal Chief of Police shall require that the applicant:

- A. Be 21 years of age or older;
- B. Be a resident within the Tribe's jurisdiction;
- C. Submit to a Tribal background check and shall not have any convictions of domestic violence, sexual assault, Class A offenses and any other aggravated offenses; and
- D. Provide proof that he or she is in current possession of a state concealed weapons permit and that the state

concealed weapons permit requires 1) a criminal history records search on each applicant; 2) the prohibition of any person convicted of a felony offense from obtaining a concealed carry weapons permit; 3) the prohibition of any person under the influence of drugs, including individuals in possession of a medical marijuana card, being declared mentally incompetent, while being intoxicated from obtaining a concealed carry weapons permit or license; and 4) competent qualification or training with the firearms to be carried by the person.

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

5-90-250

Aggravated Weapons Offenses –

- (a) A person is guilty of an aggravated weapons offense if the person:
 - (1) Carries a dangerous weapon concealed on his person;
 - (2) Threatens to use or exhibits a dangerous weapon in a dangerous and threatening manner or uses a dangerous weapon in a fight or quarrel; or
 - (3) Possesses a shotgun or rifle having a barrel or barrels of less than sixteen (16) inches in length or an altered or modified shotgun or rifle less than twenty-six (26) inches overall length.
- (b) An Aggravated Weapons offense is a Class A offense.

5-90-260

Confiscation and Forfeiture of Weapons –

Firearms and dangerous weapons used in violating any Section of this Code shall be confiscated and remain in the possession of the appropriate law enforcement authorities and officers of the Court until there is a conviction, acquittal or other resolution of the offense(s) charged. Conviction of a weapons related offense, or an offense in which a firearm or dangerous weapon was a component shall result in the forfeiture of the firearm or dangerous weapon.

C. Drug and Related Offenses –

5-90-270

Possession of Controlled Substance –

- (a) A person is guilty of possession of a controlled substance if the person possesses, sells, trades, transports, gives away, manufactures, plants, cultivates or produces any controlled substance listed in schedule I, II, III, IV and V of 21 U.S.C. § 812, as it may be amended without a prescription from a doctor or other person licensed to prescribe medicine.

- (b) While marijuana/cannabis may be listed in the schedules provided in subsection (a), any actions related to marijuana/cannabis shall not be considered a crime if conducted in accordance with the provisions of Title 23 of the Tribe's Law and Order Code titled "Use of Marijuana".
- (c) Possession of a controlled substance, other than as described in subsection (b) above, in an amount so small so as to support a reasonable inference that the substance involved was possessed for purpose of personal consumption only, and not for sale or distribution is a Class B offense.
- (d) Possession of a controlled substance, other than as described in subsection (b) and (c) above, is a Class A offense.
- (e) Offenders convicted more than once of possession of a controlled substance, other than as described in subsection (b) and (c) above, may have their access to the Reservation restricted as part of their sentence.
- (f) A person is not guilty of possession of a controlled substance if the substance possessed is used by the person in the practice of a recognized Native American religious ceremony.

5-90-280

Abuse of Psychotoxic Chemical Solvents –

- (a) A person is guilty of abuse of psychotoxic chemical solvents if the person:
 - (1) For the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system, intentionally:
 - (A) smells or inhales the fumes of any psychotoxic chemical solvent;
 - (B) possesses or purchases any psychotoxic chemical solvent; or
 - (2) knowing or believing that the purchaser or another intends to use a psychotoxic chemical solvent in violation of this Section sells or offers to sell any psychotoxic chemical solvent.
- (b) This Section shall not apply to the inhalation of anesthesia for medical or dental purposes.
- (c) As used in this Code, "psychotoxic chemical solvent" shall mean any glue, cement, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, ethyl-alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl, petone, pentachlorophenol, petroleum ether, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or in the dulling of the brain or nervous system as a result of inhalation of the fumes or vapors of such chemical substance. The statement listing the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

- (d) Abuse of a psychotoxic chemical solvent is a Class A offense.
- (e) Abuse of a psychotoxic chemical solvent with the knowledge or belief that the purchaser intends to use the psychotoxic chemical solvent in violation of this Section is a Class A offense.

5-90-290 Drug Paraphernalia – Defined –

“Drug Paraphernalia” means all equipment products and material of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or psychotoxic chemical in violation of this Code.

5-90-300 Unlawful Delivery, Sale, Possession, Manufacture of Drug Paraphernalia –

- (a) A person is guilty of unlawful delivery, sale, possession, or manufacture of drug paraphernalia if the person delivers, sells, or possesses with the intent to deliver or sell, or manufactures with intent to deliver or sell any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or psychotoxic chemical in violation of this Code.
- (b) It shall not be a crime of unlawful delivery, sale, possession, or manufacture of drug paraphernalia if a person’s actions are related to marijuana/cannabis and if conducted in accordance with the provisions of Title 23 of the Tribe’s Law and Order Code titled “Use of Marijuana”.
- (c) Unlawful delivery, sale, possession, manufacture of drug paraphernalia is a Class A offense.

5-90-310 Unlawful Use or Possession of Drug Paraphernalia –

- (a) A person is guilty of the unlawful use or possession of drug paraphernalia if the persons uses or possesses with the intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or psychotoxic chemical in violation of this Code.
- (b) It shall not be a crime of unlawful use or possession of drug paraphernalia if a person’s actions are related to marijuana/cannabis and if conducted in accordance with the provisions of Title 23 of the Tribe’s Law and Order Code titled “Use of Marijuana”.
- (c) Unlawful use or possession of drug paraphernalia is a Class B offense.

5-90-320 Property Subject to Forfeiture –

- (a) The following property is subject to confiscation upon arrest and forfeiture

upon conviction for a drug related offense under this Code:

- (1) All controlled substances and psychotoxic chemical solvents that have been manufactured, distributed, dispensed, acquired or possessed in violation of the provisions of this Code.
 - (2) All raw material, products and equipment of any kind that is used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance or psychotoxic chemical solvent in violation of the provisions of this Code.
 - (3) All property that is used, or intended for use, as a container for property described in subsections (a)(1) or (a)(2) above.
 - (4) All drug paraphernalia as defined in section 5-90-250 above.
 - (5) All books, records and research products and material, including formulas, microfilm, tapes and data, that are used, or intended for use, in violation of the provisions of this Code.
 - (6) All conveyances, including animals, aircraft and vehicles that are used, or are intended for use, to transport, or in any manner facilitate the transportation, concealment, manufacture or protection, for the purpose of sale, possession for sale, or receipt of property described in subsections (a)(1) or (a)(2) above.
- (b) The property described in this section shall be confiscated and remain in the possession of the appropriate law enforcement authorities and officers of the Court until there is a conviction, acquittal or other resolution of the offense(s) charged. Conviction of a drug related offense shall result in the forfeiture of any property described in this Section which has been confiscated.
- (c) Property related to marijuana/cannabis shall not be subject to forfeiture if such possession and use is in accordance with the provisions of Title 23 of the Tribe's Law and Order Code titled "Use of Marijuana".

5-90-330

Concurrent Jurisdiction with Federal Courts –

Jurisdiction of the Walker River Paiute Tribal Court shall be concurrent and not exclusive over any offense for which the federal courts may also have jurisdiction. The Walker River Tribal Court shall order delivery to the proper federal authorities for prosecution of any drug offender for whom the federal authorities certify they will pursue prosecution in federal court.

CERTIFICATION

As a duly-elected official of the Walker River Paiute Tribe, I do hereby certify that at a meeting duly called, noticed, and convened on the 10th day of June, 2021, at which time a quorum of 6 was present, the Title 5, Code of Criminal Offenses was duly amended by a vote of 5-FOR, 0-AGAINST, 0-ABSTAINED, and said Code has not been rescinded or amended in any form.

Amber Torres

Amber Torres, Tribal Council Chairperson

6/18/21

Date

ATTEST:

Gina L. Wachsmuth

Gina L. Wachsmuth, Tribal Council Secretary

6/19/21

Date