

RESOLUTION NO. 274-07

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Section 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, §§1[a], 1[c], and 1[h], is empowered to negotiate with Federal, State and local governments and others on behalf of the Tribe, and to authorize or direct subordinate boards, committees and Tribal Officials, to administer the affairs of the Tribe and to carry out the directives of the Tribal Council; and

WHEREAS, H.R.4472, the Adam Walsh Child Protection and Safety Act of 2006 [hereafter "Adam Walsh Act"] was signed into law by President Bush on July 27, 2006; and

WHEREAS, under section 127 of the Adam Walsh Act entitled "Election by Indian Tribes" federally recognized Indian Tribes may by resolution or other enactment of the Tribal Council:

[A] elect to carry out this subtitle as a jurisdiction subject to its provision; or

[B] elect to delegate its functions under this subtitle to another jurisdiction or jurisdictions within which territory of the Tribe is located and to provide access to its territory and such other cooperation and assistance as may be needed to enable such other jurisdiction or jurisdictions to carry out and enforce the requirements of this subtitle.

Id.; and

WHEREAS, in furtherance of the sovereignty of the Standing Rock Sioux Tribe, the Judicial Committee recommends that the Tribal Council elect to carry out requirements of the Adam Walsh Act as a jurisdiction subject to its provisions; and

WHEREAS, the Judicial Committee of the Standing Rock Sioux Tribe recommends that the Tribal Council amend Title IV of the Standing Rock Code of Justice by adding a new Chapter 16 entitled Sex Offender Registration; and

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TITLE IV. CRIMINAL OFFENSES – ORDINANCE NO. 303-07
(With Amendments by SRST Resolutions 274-07 & 627-07)

TABLE OF CONTENTS

<u>CHAPTERS</u>	<u>PAGE(s)</u>
CHAPTER 1. GENERAL PROVISIONS	1 - 3
4-101. Criminal Offenses Based on Voluntary Conduct.....	1
4-102. States of Mind.....	1
(a) Intentional	
(b) Negligent	
(c) Reckless	
CHAPTER 2. DEFENSES	1- 3
4-201. Burden of Proof.....	1
4-202. Ignorance or Mistake.....	2
4-203. Alcoholism and Intoxication.....	2
4-204. Mental Disease or Defect.....	2
4-205. Self Defense.....	2
4-206. Defense of Others.....	3
4-207. Defense of Property.....	3
4-208. Use of Deadly Force.....	3
CHAPTER 3. COMPLICITY, SOLICITATION AND ATTEMPS	3
4-301. Criminal Complicity and Soliciting.....	3
4-302. Attempts.....	3
CHAPTER 4. PARDONS	4 - 5
4-401. Power of Pardon.....	4
4-402. Application for Pardon.....	4
4-403. Hearing on Application.....	5
4-404. Determination of Commission.....	5

TITLE IV. CRIMINAL OFFENSES – ORDINANCE NO. 303-07
(With Amendments by SRST Resolutions 274-07 & 627-07)

TABLE OF CONTENTS

<u>CHAPTERS</u>	<u>PAGE(s)</u>
CHAPTER 5. CRIMES AGAINST PERSONS	6 - 12
4-501. Murder.....	6
4-502. Manslaughter.....	6
4-503. Negligent Homicide.....	6
4-504. Causing or Aiding Suicide.....	6
4-505. Kidnapping.....	6
4-506. Harboring a Child.....	6
4-507. False Imprisonment.....	7
4-508. Rape.....	7
4-509. Credibility or Conduct of Complaining Witness.....	8
4-510. Statutory Rape.....	8
4-511. Indecent Exposure.....	8
4-512. Prostitution and Patronizing a Prostitute.....	8
4-513. Adultery.....	9
4-514. Unlawful Cohabitation.....	9
4-515. Sexual Assault.....	9
4-516. Incest.....	10
4-517. Simple Assault.....	10
4-518. Aggravated Assault.....	10
4-519. Stalking.....	10
4-520. Possession and/or Use of or Being Intoxicated by Alcoholic Beverages upon the Premises or Residence of an Elderly Person.....	11-12
(a) Definitions	
(b) Possession and Use of Alcohol Prohibited at “Elderly Manors and Tribal Old Age Homes”	
(c) Banning Intoxicated persons from ‘Eldery Manors and Old Age Homes”	
(d) Penalties	

TITLE IV. CRIMINAL OFFENSES – ORDINANCE NO. 303-07
(With Amendments by SRST Resolutions 274-07 & 627-07)

TABLE OF CONTENTS

<u>CHAPTERS</u>	<u>PAGE(s)</u>
CHAPTER 6. CRIMES AGAINST PROPERTY	12 - 15
4-601. Arson.....	12
4-602. Burglary.....	12
4-603. Criminal Trespass.....	13
4-604. Theft.....	13
4-605. Robbery.....	14
4-606. Criminal Mischief.....	14
4-607. Injury to Public Property.....	15
4-608. Issuing Bad Checks.....	15
4-609. Forgery.....	15
 CHAPTER 7. DANGEROUS WEAPONS AND EXPLOSIVES	 16 - 17
4-701. Possession of a Firearm by Convicted Felon.....	16
4-702. Carrying Concealed Dangerous Weapons.....	16
4-703. Carry a Loaded Firearm in a Motor Vehicle.....	16
4-704. Possession of Explosives.....	16
4-705. Use of Dangerous Weapons by Children.....	17
4-706. Unlawful Discharge of Firearms.....	17
 CHAPTER 8. CRIMINAL OFFENSES INVOLVING DRUGS	 17 - 28
4-801. Definitions.....	17-19
4-802. Criminal Sale of Drugs.....	20
4-803. Criminal Possession of Drugs.....	20
4-804. Criminal Possession of a Drug with Intent to Deliver or Sell....	20
4-805. Fraudulently Obtaining Drugs.....	21
4-806. Criminal Possession Of Toxic Substances.....	21

TITLE IV. CRIMINAL OFFENSES – ORDINANCE NO. 303-07
(With Amendments by SRST Resolutions 274-07 & 627-07)

TABLE OF CONTENTS

<u>CHAPTERS</u>	<u>PAGE(s)</u>
CHAPTER 8. CRIMINAL OFFENSES INVOLVING DRUGS (Continued)	17 - 28
4-807. Criminal Sale Of Drugs To A Minor.....	21
4-808. Possession Of Drug Paraphernalia.....	22-24
4-809. Meth Precursor.....	24
4-810. Alternate Sentencing Authority.....	24
4-811. Seizures and Forfeiture Related To Drugs.....	25-28
(1) Property Subject to Forfeiture	
(2) Exceptions to Forfeiture	
(3) When Property May Be Seized	
(4) Forfeiture of Property	
4-812. Violations Of Non-Indians.....	28
CHAPTER 9. OFFENSES INVOLVING GOVERNMENTAL PROCESSES	28 - 31
4-901. Bribery.....	28
4-902. Interfering With Elections.....	28-29
4-903. Perjury.....	29
4-904. Criminal Contempt.....	29
4-905. Resisting Arrest.....	29-30
4-906. Escape.....	30
4-907. Hindering a Law Enforcement Officer.....	30
4-908. Tampering With Witnesses or Information.....	30
4-909. Tampering With Physical Evidence.....	31
CHAPTER 10. DISORDERLY CONDUCT AND RELATED OFFENSES	31 - 32
4-1001. Disorderly Conduct.....	31
4-1002. Disrupting Meetings or Processions.....	31
4-1003. Unlawful Dancing.....	32
4-1004. Cruelty to Animals.....	32

TITLE IV. CRIMINAL OFFENSES – ORDINANCE NO. 303-07
(With Amendments by SRST Resolutions 274-07 & 627-07)

TABLE OF CONTENTS

<u>CHAPTERS</u>	<u>PAGE(s)</u>
CHAPTER 11. GAMBLING	32 - 33
4-1101. Gambling.....	32-33
CHAPTER 12. EXPLOITATION OF CHILDREN	33 - 35
4-1201. Contributing to the Delinquency of a Minor.....	33
4-1202. Failure to Support Dependant Persons.....	33
4-1203. Failure to Send Children to School.....	33
4-1204. Child Abuse.....	33-34
4-1205. Child Neglect.....	34
4-1206. Failure to Report Child Abuse or Unauthorized Disclosure of Reports.....	34
4-1207. Street Gang Crime.....	35
4-1208. Encouraging Minors to Participate in Street Gang Crime.....	35
CHAPTER 13. LIQUOR LAWS	36
4-1301. Failure to Comply with Tribal Liquor Laws.....	35
4-1302. Unlawful Use of Intoxicating Beverages by Minors.....	35
4-1303. Selling Intoxicating Beverages to Pregnant Women.....	36
4-1304. Selling Tobacco Products to Minors.....	36
CHAPTER 14. PENALTIES	36
4-1401. Penalties.....	36
(a) Felony	
(b) Class A Misdemeanor	
(c) Class B Misdemeanor	

TITLE IV. CRIMINAL OFFENSES – ORDINANCE NO. 303-07
(With Amendments by SRST Resolutions 274-07 & 627-07)

TABLE OF CONTENTS

<u>CHAPTERS</u>	<u>PAGE(s)</u>
CHAPTER 15. GANG AND GANG RELATED ACTIVIES	36 – 41
4-1501. Definitions.....	36-37
4-1502. Participation In a Street Gang.....	38
4-1503. Hiring, Engaging or Using a Minor to Participate in a Street Gang.....	38
4-1504. Drive By Shootings.....	38
4-1505. Gang Related Congregations.....	39
4-1506. Gang Activity and Forfeiture.....	39
4-1507. Juvenile Gatherings.....	40
4-1508. Penalties Used By Criminal Street Gang; Nuisances, Actions For Injunction and Other Damages, and Other Remedies for Unlawful Use; Exceptions.....	40-41
CHAPTER 16. SEX OFFENDER REGISTRATION	41 - 49
4-1601. Definitions.....	41-44
4-1602. Registry Requirements For Jurisdictions.....	44
4-1603. SRST Registry Requirements For Sex Offenders.....	45
4-1604. Information Required In Registration.....	45-46
4-1605. Duration Of Registration Requirement.....	46-47
4-1606. Periodic In Persons Verification.....	47
4-1607. Duty To Notify Sex Offenders Of Registration Requirements And To Register.....	47-48
4-1608. Public Access To Sex Offender Information Through The Internet.....	48-49
4-1609. Severability.....	49
4-1610. Adoption.....	49
PROOF OF ADOPTION OF AMENDMENTS:	
SRST Resolution No. 274-07 & Resolution No. 627-07.....	Attachments

ORDINANCE NO. 303-07

TITLE IV. CRIMINAL OFFENSES

(Amendments-New Chapter Nos. 8 & 16 - Approved by SRSTC on June 07 & December 07 , 2007)

CHAPTER 1. GENERAL PROVISIONS

4-101. Criminal Offenses Based on Voluntary Conduct

No person shall be convicted of an offense except based on conduct which includes a voluntary act or the omission to perform an act of which the defendant is physically capable. Unless otherwise provided in this Code with respect to a particular offense, an offense is established only if a person acts intentionally with respect thereto.

4-102. States of Mind

- (a) **Intentional.** A defendant's state of mind is intentional with respect to a result or to conduct if the defendant's conscious objective is to engage in such conduct or to cause such a result.
- (b) **Negligent.** Conduct is negligent if, with respect to a result or to a circumstance, a person should be aware of a substantial and unjustifiable risk that such a result will occur or that such a circumstance exists, and his or her conduct involves significant deviation from the standard of care that a reasonable person would observe.
- (c) **Reckless.** Conduct is reckless if, with respect to a result or to a circumstance, a person consciously disregards a substantial risk that such a result will occur or that such a circumstance exists, and the risk is of such a nature and degree that its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the situation.

CHAPTER 2. DEFENSES

4-201. Burden of Proof

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

4-202. Ignorance or Mistake

- (a) Ignorance or mistake as to a matter of fact or law is a defense if:
 - (1) the ignorance or mistake negates the necessary mental state required for the commission of an offense; or
 - (2) the law provides that the state of mind established by such ignorance or mistake constitutes a defense.
- (b) Whenever in this Code, an offense depends on a child's being below the age of twelve (12) years of age, it is no defense that the defendant did not know the child's age, or reasonably believed the child to be older than twelve years of age. When criminality depends on the child's being below a critical age other than twelve years of age it is an affirmative defense of the defendant to prove that he reasonably believed the child to be above the critical age.

4-203. Alcoholism and Intoxication

- (a) Alcoholism and intoxication are not defenses unless they negate an element of the offense.
- (b) When negligence or recklessness establishes an element of the offense, self-induced intoxication is no defense.
- (c) Alcoholism and intoxication do not, in themselves, constitute a mental disease or defect within the meaning of Section 4-204.

4-204. Mental Disease or Defect

- (a) A person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect as defined in the Mental Health Code, Title VII, he or she lacks substantial capacity either to appreciate the wrongfulness of that conduct or to conform that conduct to the requirements of law.
- (b) As used in this Section, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

4-205. Self-Defense

- (a) The use of reasonable force is a defense when a person reasonably believes that such force is immediately necessary to protect himself or herself.
- (b) A person is not justified in using force for the purpose of resisting arrest, execution of process, or other performance of duty by a public servant regardless of whether the conduct of the public servant is lawful; but excess force on the part of the public servant may be resisted.
- (c) A person is not justified in using force if the conduct of the person against whom force

is used was provoked by the defendant himself with the intent to cause physical injury to that other person.

4-206. Defense of Others

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

- (a) the defendant reasonably believes that the person whom he seeks to protect would be justified in using such protective force; and
- (b) the defendant has not, by provocation or otherwise, forfeited the right of self-defense; and
- (c) the defendant reasonably believes that intervention is necessary for the protection of such other person.

4-207. Defense of Property

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

4-208. Use of Deadly Force

The use of deadly force is a defense only where the defendant reasonably believes that such force is necessary to protect himself or herself or another person against death, serious bodily harm, kidnapping, burglary of an occupied home, a sexual act as defined in Section 4-508 compelled by force or threat, or to prevent or terminate the commission or attempted commission of arson.

CHAPTER 3. COMPLICITY, SOLICITATION, AND ATTEMPTS

4-301. Criminal Complicity and Solicitation

- (a) A person may be convicted of an offense based upon the conduct of another person when:
 - (1) acting with the state of mind sufficient for the commission of the offense, the defendant causes another person to engage in such conduct; or
 - (2) with the intent that an offense be committed, the defendant solicits, requests, commands, induces or intentionally aids another person to engage in such conduct; or
 - (3) having a legal duty as a law enforcement officer to prevent the offense, the defendant fails to make proper effort to do so.

- (b) The penalty for being an accomplice to a crime is the same as the penalty for being a principal in the crime.
- (c) A person is not liable under this Section for the conduct of another if he terminates his complicity prior to the commission of the offense and gives timely warning to law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

4-302. Attempts

- (a) A person is guilty of an attempt to commit a crime who intentionally does or omits to do anything which, under the circumstances as the defendant believes them to be, is an act or omission constituting a substantial step toward the commission of a crime.
- (b) A person who engages in conduct designed to aid another person to commit a crime which would establish complicity under Section 4-301 (a)(2) if the crime were committed by such other person is guilty of an attempt to commit the crime, although the crime is not actually committed or attempted.
- (c) Conduct is not criminal which could only be characterized as an attempt to commit a crime which is itself defined solely in terms of attempt.
- (d) The penalty for an attempted crime is the same as the penalty for the completed crime.

CHAPTER 4. PARDON

4-401. Power of Pardon

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

Commission members including the Chairman shall serve a term of two years. A Commission member found guilty of neglect of duty, misconduct in office, or an offense involving dishonesty may be removed by the Tribal Council by a vote of 2/3 of the members of the Tribal Council voting, provided such Commissioner is first given 20 days notice in writing by the Secretary of the Council and a chance to be heard.

4-402. Applications For Pardon

All applications for pardon shall be filed in writing with the Chairman of the Commission. Upon receiving an application, the Chairman shall provide copies of the application to each member of the Commission and shall cause the application to be posted in public places on the reservation. This public notice shall state the date on which the application will be considered by the Commission, which shall be not less than thirty (30)

nor more than sixty (60) days after the application is filed. The application shall be sworn to by the applicant under oath or by a person authorized to act in his or her behalf. The application shall state concisely the ground upon which the pardon is sought, and in addition shall contain the following facts:

- (a) The name, under which the applicant was convicted, and every alias by which he has been know;
- (b) The date and crime the applicant was convicted of;
- (c) The date and the terms of the sentence imposed against him;
- (d) The name of the Trial Judge who presided at the trial;
- (e) If an appeal was taken from the judgment of conviction, the date of the final determination by the Supreme Court;
- (f) The age, birthplace, parentage, occupation, and residence of the applicant; and
- (g) A statement of all other arrests, indictments, information, and convictions, if any, against the applicant.

4-403. Hearing on Application

The Commission Chairman shall schedule hearing on each application for pardon not less than thirty (30) nor more than sixty (60) days after it is filed. Prior to the hearing the Commission Chairman shall obtain and make available to all members of the Commission the complete record of the conviction from the Standing Rock Sioux Tribal Court, together with any recommendation by the Chief Judge of the Standing Rock Sioux Tribal Court. The Commission Chairman or Commission may also issue process requiring the presence of any person subject to its jurisdiction before it, with or without books and papers deemed relevant to the hearing; and the failure of such person to comply with the process shall be considered criminal contempt under Section 4-904 and shall be punishable accordingly. The applicant shall be given the opportunity to appear of the hearing, and have the right to be represented by counsel at his own expense. All testimony before the Commission shall be under oath and open to the public. The Tribal Prosecutor shall also be allowed to testify under oath before the Commission if the Prosecutor recommends denying the pardon.

4-404. Determination by the Commission

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

CHAPTER 5. CRIMES AGAINST PERSONS

4-501. Murder

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

Murder is a felony.

4-502. Manslaughter

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

Manslaughter is a felony.

4-503. Negligent Homicide

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

Negligent homicide is a felony.

4-504. Causing or Aiding Suicide

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

Causing or aiding suicide is a Class A misdemeanor.

4-505. Kidnapping

Whoever by force, threat, or deception:

- (a) removes another from his or her place of residence or business, or a substantial distance from the vicinity from where he or she is located; or
- (b) confines another for a substantial period in a place of isolation;

is guilty of kidnapping.

Kidnapping is a felony.

4-506. Harboring a Child

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

whereabouts.

Harboring a child is a Class B misdemeanor for the first offense, and a Class A misdemeanor for each subsequent offense.

4-507. False Imprisonment

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

False imprisonment is a Class A misdemeanor.

4-508. Rape

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

- (a) the defendant compels the other person to submit by force or by any threat that would render a person of reasonable firmness incapable of resisting; or
- (b) the defendant or someone else, with the defendant's knowledge, has substantially impaired the other person's power to appraise or control that person's conduct: by administering or employing, without the other person's knowledge, intoxicants, drugs or another similar substance with intent to prevent resistance; or
- (c) the other person is unconscious; or
- (d) the defendant knows that the other person submits because the other person falsely supposes the defendant to be someone else, unless the defendant is the spouse of the other person; or
- (e) the other person is under twelve (12) years of age;
- (f) or the defendant knows that the other person suffers from a mental disease or defect which renders that person incapable of understanding the nature of his or her conduct, unless the defendant is the spouse of the other person; and
- (g) the other person is in official custody or otherwise detained in a hospital, prison, or other similar institution and the defendant has supervisory or disciplinary authority over the detained person.

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

Rape is a felony.

4-509. Credibility or Conduct of the Complaining Witness

- (a) In a prosecution for rape, opinion evidence, reputation evidence, and evidence of specific instances of the complaining witness' sexual conduct or any of such evidence, is not admissible on behalf of the defendant to prove consent by the complaining witness. This section shall not be 'applicable to evidence of the complaining witness' sexual conduct with the defendant.
- (b) If evidence of sexual conduct of the complaining witness is to be offered to attack the credibility of the complaining witness, the defendant must fill written motion to the Court in advance of the trial, stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness. The hearing on the motion, will be prior to trial and outside the presence of the jury, if any.

4-510. Statutory Rape

A person eighteen (18) years of age or over who engages in a sexual act (as defined in Section 4-508) with another person who is between the ages of twelve (12) years and fifteen (15) years of age and under is guilty of statutory rape.

Statutory rape is a felony.

4-511. Indecent Exposure

A person who exposes his or her genitals or other intimate parts under circumstances likely to cause affront or alarm is guilty of indecent exposure.

Indecent exposure is a Class A misdemeanor.

4-512. Prostitution and Patronizing a Prostitute

A person who;

- (a) is an inmate of a house of prostitution, manages a house of prostitution or is otherwise engaged in sexual activity as a business; or
- (b) solicits another person to hire a prostitute or commit an act of prostitution; or
- (c) loiters in view of any public place with the intent of being hired to engage in sexual activity; or
- (d) hires a prostitute to engage in sexual activity or enters or remains in a house of prostitution with intent to engage in sexual activity is guilty of prostitution or patronizing a prostitute.

"Sexual activity" means sexual act or sexual contact as those terms are defined in Section 4-508 and 4-515.

Prostitution or patronizing a prostitute is a Class A misdemeanor, unless the prostitute is less than seventeen (17) years of age, in which case, it is a felony.

4-513. Adultery

A person who engages in a sexual act as defined in Section 4-508 with another person, either of whom is married to a third person, is guilty of adultery.

No prosecution shall be instituted under this Section except on the complaint of the spouse of one alleged offender, and the prosecution shall not be commenced later than one year from commission of the offense.

Adultery is a Class A misdemeanor.

4-514. Unlawful cohabitation

A person who unlawfully cohabits with another is guilty of unlawful cohabitation. For the purposes of this section, unlawful cohabitation is the living together as husband and wife for a period of seven days or more without being married to each other.

Proof of sexual activity as defined in Section 4-508 is not necessary to constitute an offense.

4-515. Sexual Assault

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

- (a) the other person is twelve (12) of age or under; or
- (b) the other person is in official custody or otherwise detained in a hospital, prison or other similar institution and the defendant has supervisory or disciplinary authority over the detained person.

"Sexual contact" means any touching of the sexual or other intimate parts of the person with the intention of arousing or gratifying sexual desire.

Sexual assault is a felony.

4-516. Incest

Any person who has sexual contact with another person and is related to that person as: parent and child; grandparent and grandchild; brother and sister; half-brother and half-sister; aunt and nephew; uncle and niece; or cousins in the first or second degree is guilty of incest.

A charge brought pursuant to this section may be commenced at any time prior to the time the victim becomes age twenty-five or within seven years of the commission of the crime, whichever is longer.

Incest is a felony.

4-517. Simple Assault

A person who;

- (a) intentionally causes bodily injury to another; or
 - (b) recklessly or negligently causes bodily injury to another with a deadly weapon; or
 - (c) Attempts by physical menace to put another in fear of serious bodily harm;
- is guilty of a simple assault.

Simple assault is a Class A misdemeanor.

4-518. Aggravated Assault

Whoever;

- (a) intentionally causes serious bodily injury to another; or
- (b) intentionally causes bodily injury to another with a deadly weapon; or
- (c) recklessly causes serious bodily injury to another under circumstances manifesting indifference to the value of human life; or
- (d) causes bodily injury to an elected or appointed public official at any time; or
- (e) causes bodily injury to a Tribal employee who is on duty at the time of the injury; or causes bodily injury to a law enforcement officer;

is guilty of aggravated assault.

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

As used in this Chapter, a Deadly Weapon is any firearm, knife or device, instrument, material or substance, whether animate or inanimate, which is calculated or designed to inflict death or serious bodily harm, or by the manner in which it is used is likely to inflict death or serious bodily harm.

Aggravated assault is a felony.

4-519. Stalking

Any person who willfully, maliciously, and repeatedly follows or harasses another person or who makes a credible threat to another person with the intent to place that person in reasonable fear of bodily injury is guilty of stalking.

Stalking is a Class A misdemeanor.

4-520. Possession and/or Use of or Being Intoxicated By Alcoholic Substances upon the Premises or Residence of an Elderly Person.

(a). **Definitions** As used in this ordinance, the following terms shall mean:

- (1) **"Alcoholic beverage"**, any distilled spirits, wine and malt beverages as ordinance.
- (2) **"Distilled spirits"**, ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits including all dilutions and mixtures thereof, for non-industrial use containing not less than one-half of one percent of alcohol by weight.
- (3) **"Elderly Person"**, a person sixty (60) years of age or older residing within the exterior boundaries of the Standing Rock Sioux Tribe.
- (4) **"Premises or Residence of an Elderly Person."** The permanent or temporary home of one or more Elderly Persons, including a two hundred foot zone or area surrounding the premises or residence.
- (5) **"Intoxication"**, causing a disturbance of mental or physical capacities resulting from the ingestion or introduction of substances into the body.
- (6) **"Malt beverage"**, a beverage made from the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared there from, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption containing not less than one-half of one percent of alcohol by weight.
- (7) **"Wine"**, any liquid either commonly used, or reasonably adapted to use, for beverage purposes, and obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar and containing not less that one-half of one percent of alcohol by weight but not more than twenty-four percent of alcohol by weight.

(b) **Possession and Use of Alcohol Prohibited at "Elderly Manors and Tribal Old Age Homes"**

No person shall possess and or use alcoholic beverages upon the premises or residence of an Elderly Person on the Standing Rock Indian Reservation.

(c) **Banning Intoxicated persons from "Elderly Manors and Tribal Old Age Homes"**

Any person that is under the influence of intoxication of an alcoholic beverage is banned from the premises or residence of an Elderly Person on the Standing Rock Indian Reservation.

(d) **Penalties**

- (1) Any enrolled member of a federally recognized Tribe or person recognized as an Indian within the reservation community or District in violation of sections 4-518(b) or 4-581 (b) may be arrested and or escorted from the premises or residence of an Elderly Person by the police and subject to prosecution for violation of a misdemeanor. Violation of 4-518(b) and 4-518(c) may be subject to a civil action for trespass. The penalty for such civil violation shall not be less than fifty dollars (\$50.00) and not more than one hundred dollars (\$100.00).
- (2) Any person not an enrolled member of a federally recognized Indian Tribe nor a person recognized as an Indian within the reservation community alleged to have violated the provisions of this ordinance may be detained, arrested, and or removed from the premises or residence of an Elderly Person by the police and turned over to the appropriate authorities for prosecution. Violation of 4-518(b) and 4-518 (c) may be subject to a civil action for trespass. The civil penalty in Standing Rock Sioux Tribal Court for trespass, shall under this ordinance, shall be not less than fifty dollars (\$50.00) and not more than one hundred dollars (\$100.00).

CHAPTER 6. CRIMES AGAINST PROPERTY

4-601. Arson

A person who;

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

is guilty of arson.

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

4-602. Burglary

A person who enters or remains in a building or occupied structure, or separately secured or occupied portion thereof, with intent to commit any crime therein, when;

- (a) the offender inflicts, or attempts or threatens to inflict physical harm on another; or
- (b) the offender is armed with a dangerous weapon; and

- (c) the offense is committed in the nighttime is guilty of burglary.

The word "nighttime" includes the period between sunset and sunrise.

Burglary is a felony.

4-603. Criminal Trespass

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

- (a) enters or surreptitiously remains in any building or occupied structure, or separately secured or occupied portion thereof ; or,
- (b) enters or remains in any place as to which notice against trespass is given by:
- (1) actual communication to the defendant; or
 - (2) posting in a manner reasonably likely to come to the attention of intruders; or
 - (3) fencing or other enclosure manifestly designed to exclude intruders;
- (c) intentionally allows livestock to occupy or graze on the lands of another person;
- is guilty of criminal trespass.

Criminal trespass is a Class A misdemeanor if the defendant enters or remains in any building or occupied structure, and otherwise is a Class B misdemeanor.

4-604. Theft

Whoever;

- (a) intentionally takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof; or
- (b) intentionally obtains the property of another by misrepresentation or deception; or
- (c) intentionally obtains the property of another by threat; or
- (d) receives, retains or disposes of the property of another knowing that it has been stolen or believing that it has probably been stolen, unless the property is received, retained, or disposed of with intent to restore to the owner; or
- (e) comes into control of property of another that the defendant knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, and with intent to deprive the owner thereof, fails to take reasonable measures to restore the property to a person entitled to have it; or

- (f) intentionally obtains services, known by the defendant to be available only for compensation, by avoiding payment for the services, or having control over the disposition of the services of another to which he or she is not entitled, knowingly diverts those services to the defendant's own benefit or to the benefit of another not entitled thereto; or
- (g) intentionally disposes of uses, or transfers any-interest in property which has been entrusted to the defendant as a parent or guardian for a minor, or for any other reason, for other than the purpose or purposes for which the property placed in trust; or
- (h) intentionally misbrands or alters any brand or mark on any livestock of another person;
is guilty of theft.

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

Theft is a felony, if the amount involved exceeds \$100. Otherwise it is a Class A misdemeanor.

4-605. Robbery

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

- (a) inflicts or attempts to inflict bodily injury upon another; or
 - (b) threatens or menaces another with immediate bodily injury;
- is guilty of robbery.

Robbery is a felony.

4-606. Criminal Mischief

Whoever intentionally or recklessly:

- (a) damages tangible property of another; or
- (b) tampers with tangible property of another so as to endanger person or
- (c) while under the influence of alcohol or other intoxicating substance; defaces, damages, or tampers with the property of another;

is guilty of criminal mischief.

Criminal mischief is a Class A misdemeanor if the defendant intentionally causes pecuniary loss in excess of \$100.00. Otherwise, it is a Class B misdemeanor.

4-607. Injury to Public Property

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

- (a) uses or injures any tribal or other public property; or
- (b) causes a substantial interruption or impairment of a public service;
- (c) while under the influence of alcohol or other intoxicating substance; defaces, damages, or tampers with any tribal, state or any agency of the federal government, while that property is located within the boundaries of the Standing Rock Sioux Tribe Indian Reservation;

is guilty of injury to public property.

Injury to public property is a Class A misdemeanor if the defendant causes pecuniary loss in excess of \$100. Otherwise, it is a Class B misdemeanor.

4-608. Issuing Bad Checks

Whoever issues any check, draft or order upon any bank or other depository knowing that there are not sufficient funds in the defendant's account to pay such check, draft or order in full upon presentation;

is guilty of issuing bad checks.

Issuing bad checks is a Class A misdemeanor if the check, draft or order is in excess of \$100. If the check, draft or order is \$100.00 or less it is a Class B misdemeanor for the first or second offense. And a Class A misdemeanor for a third or subsequent offense.

4-609. Forgery

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

- (a) knowingly and falsely makes, completes, executes, authenticates, issues, transfers, or alters any writing; or
- (b) knowingly utters a forged writing;

is guilty of forgery.

Forgery is a felony if the amount involved exceeds \$100. Otherwise, it is a Class A misdemeanor.

CHAPTER 7. DANGEROUS WEAPONS AND EXPLOSIVES

4-701. Possession of a Firearm by Convicted Felon

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

Unlawful possession by a convicted felon is a felony.

4-702. Carrying Concealed Dangerous Weapons

Whoever carries, concealed about his or her person, any of the following weapons, unless they are carried with specific governmental approval, is guilty of carrying a concealed dangerous weapon:

- (a) any blackjack, bill, bludgeon, metal knuckles, or any knife with a blade over six (6) inches long or other sharp or dangerous instrument usually employed in the attack or defense of a person; or
- (b) any gun or dangerous firearm, whether loaded or unloaded.

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

Carrying a concealed weapon is a Class A misdemeanor.

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

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

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

4-704. Possession of Explosives

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

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

Possession of explosives is a Class A misdemeanor.

4-705. Use of Dangerous Weapons by Children

Whoever is a parent, guardian, or other person having charge or custody of any minor under fifteen (15) years of age, and knowingly allows such child to carry or use in public any dangerous weapon as defined in Section 4-70 I, except when such child is in the company and under the direct control of such parent, guardian, or other adult person authorized by the parent or guardian, is guilty of use of dangerous weapons by children.

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

4-706. Unlawful Discharge of Firearms

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

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

Unlawful discharge of firearms is a Class A misdemeanor.

CHAPTER 8. CRIMINAL OFFENSES INVOLVING DRUGS

4-801. Definitions

- (1) **"Agent"** means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser of dangerous drugs; for the purpose of this section, includes a common or contract carrier, public warehouseman or employee of the carrier or warehouseman who possesses a drug in the usual course of his legal business or employment.
- (2) **"Compound"** means any processes in which two or more chemical substances are mixed together to form a drug.
- (3) **"Conveyance"** means anything that may be used for the purpose of transporting. Such term includes, but is not limited to, motor vehicles, airplanes, boats, livestock, and any container.
- (4) **"Deliver"** means the actual, constructive or attempted transfer of a controlled substance from one person to another whether or not there is an agency relationship.
- (5) **"Dispense"** means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

- (6) **"Distribute"** means the delivery of a controlled drug, substance, or marijuana.
- (7) **"Drug"** means any marijuana, narcotic drug, including any substance containing opium, heroine, isonipecaine, amidone, isoamidone, ketobemidone, lysergic acid diethylamide, coca leaves, any opiate, or any substance, compound, or derivative of the following controlled substances:

acetorphine	ethylmorphine	myrophine
acetyldihydrocodeine	etonitazene	nalorphine
allyiprodine	etorphine	nicocodeine
alphaprodine	etoxeridine	noracymethadol
amphetamine	fenanyl	norlevorphanol
anileridine	furethidine	normethadone
apomorphine	glutethimide	normorphine
barbital	hashish	norpipanone
barbituric acid	heroin	opium
benzethidine	hydrocodone	oxycodone
benzylmorphine	oxymorhone	paraldehyde
betaprodine	hydromorphine	levomethorphan
bexitrimide	hydromorphinol	pethidine
bufotenine	hydroxypethidine	petrichioral
chloral beaine	ibogaine	peyote
chioral hydrate	isomethadone	phenampromide
chiordiazepoxide (Librium)	isoquinoline	phenazocine
ketobemidone	phencyclidine	chiorkexadol
phenmetrazine	clonitazene	levophenacilmorphan
phenobarbitol	levorphanol	phenomorphan
codeine	lysergic acid	phenorperidine
codeine- methybromide	lysergic acid amide	phenodoxone
codeine-n-oxide	lysergic acid- diethylmide	phentermine
cyprenorphine	meprodine	pholcodine
dephenoxylate	meprobamate	piritramide
desomorphine	mescaline	priminodine
dextropropoxyphene (Darvon)	metazocine	proheptazine
diampromide	methadol	propiram
diazepam (Valium)	methadone	psilocybin
diethylthiambutene	methamphetamine	psilocyn
diethyltripamine	methaqualone	racemethorphan
dihydrocodeine	methohexital	racemorphan
dihydromorphine	methyl-desorphine	sulfoncliethyl- methane
dimenoxidol	methyl-dhydro- morphine	sulfonmethylinethane
dimethylthiambutene	methylphanbarbital	sulfonmethane
methylphenidate thebaine	dimethyltriptamine	thebacon
trimeperidine	dioxaphetyl- butyrate	methypylon
dipipanone	moramide	metopon
morpheridine	ethinaniate	ethchlorvynol
morphine- methybromide	butene	ethylmethylthiam
morphine-n-oxide		morphine- methylsufonate

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

- (9) **"Ingestion"** means any person who intentionally ingests, inhales, or otherwise takes into the body any substance, except alcoholic beverages, as defined in 4-801 (7) for purposes of becoming intoxicated.
- (10) **"Manufacture"** means any act which would result in the creation of a drug.
- (11) **"Member"** means any enrolled member of the Standing Rock Sioux Tribe.
- (12) **"Non-Indian"** means any person not an enrolled member of the Standing Rock Sioux Tribe or any federally recognized tribe.
- (13) **"Non-Member"** means a person not a member of the Standing Rock Sioux Tribe but an enrolled member of a federally recognized tribe.
- (14) **"Possession"** means the knowing and willful control of a drug and/or drug paraphernalia.
- (15) **"Practitioner"** means a physician, dentist, pharmacist, nurse, veterinarian, or other person licensed, registered or otherwise permitted to distribute, dispense or administer drugs in the course of a professional practice.
- (16) **"Precursor"** means the immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance.
- (17) **"Prepare"** means any act which would tend to make a drug ready for sale.
- (18) **"Prescription"** means a written direction for the preparation, distribution, and therapeutic use of medicine.
- (19) **"Prescribed Medication"** means a medication that is obtained through a prescription prepared by a practitioner.
- (20) **"Process"** means any act or series of acts which is intended to produce a drug.
- (21) **"Production"** means the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.
- (22) **"Standing Rock Sioux Tribe"** herein referred to as "Tribe".
- (23) **"Standing Rock Tribal Court"** herein referred to as "Court".
- (24) **"Over the counter sale"** means the retail sale of a drug or product other than a controlled, or imitation controlled, substance
- (25) **"Ultimate User"** means a person who lawfully possesses a drug for his/her own use, for the use of a member of his/her household, or for administration to an animal owned or controlled by him/her or by a member of his/her household.

4-802. Criminal Sale Of Drugs

- (1) A person commits the offense of criminal sale of drugs if he/she sells, barter, exchange or give away, or manufactures, prepares, cultivates, compounds , produces, or processes any drug no matter how small of an amount.
- (2) The criminal sale of drugs shall be a felony and a person convicted of the criminal sale of drugs shall be imprisoned for a mandatory minimum term of six (6) months, not to be suspended or deferred, and shall be fined five hundred dollars (\$500.00).
- (3) Practitioners and agents lawfully acting in the usual course of their professional practice or business are exempt from this subsection.

4-803. Criminal Possession Of Drugs

- (1) A person commits the offense of criminal possession of drugs if he/she possesses any amount of a drug.
- (2) Criminal possession of drugs shall be a Class A Misdemeanor and a person convicted of criminal possession of drugs shall be imprisoned for a mandatory term of no less than ten (10) days nor more than six (6) months and shall be fined in an amount not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). The minimum fine must be imposed as a condition of a suspended or deferred sentence.
- (3) Ultimate users, practitioners, and agents, acting in the lawful usual course of their professional practice or business are exempt from this subsection.

4-804. Criminal Possession of a Drug with Intent To Deliver Or Sell

- (1) A person commits the offense of criminal possession with intent to deliver or sell if he/she possesses with intent to sell, deliver, or distribute or ingests any illegal drug.
- (2) A person commits the offense of criminal possession with intent to sell marijuana if he/she possesses fourteen (14) grams of marijuana or more.
- (3) The venue for an ingestion violation exists in either the jurisdiction in which the substance was ingested, inhaled, or otherwise taken into the body or the jurisdiction in which the substance was detected in the body of the accused.
- (4) Criminal possession of a drug with intent to deliver or sell shall be a tribal felony and a person convicted of the offense of criminal possession with intent to deliver or sell shall be imprisoned for a mandatory term of six (6) months, not to be suspended or deferred, and shall be fined in an amount of five hundred dollars (\$500.00).
- (5) No person may knowingly possess a controlled substance or drug unless the drug or substance was obtained directly or pursuant to a valid prescription order from a practitioner, while acting in the course of the practitioner's professional practice or except as otherwise authorized by practitioner.

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

4-805. Fraudulently Obtaining Drugs

- (1) A person commits the offense of fraudulently obtaining drugs if he/she obtains or attempts to obtain a drug by:
- (a) fraud, deceit, misrepresentation, or subterfuge
 - (b) the use of a forged, altered or fictitious prescription
 - (c) the use of a false name or address on a prescription
 - (d) the concealment of a material fact; or
 - (e) the representation that he/she is a manufacturer, wholesaler, distributor, or dispenser of dangerous drugs.
- (2) Fraudulently obtaining drugs shall be a tribal felony and a person convicted of fraudulently obtaining drugs shall be imprisoned for a mandatory term of no less than three (3) months nor more than six (6) months and a fine of at least one hundred dollars (\$100.00) but not more than five hundred dollars (\$500.00).

4-806. Criminal Possession Of Toxic Substances

- (1) A person commits the offense of criminal possession of toxic substances if he/she inhales, ingests, or possesses with the intent to inhale or ingest, for the purpose of altering his/her mental state, any substance with toxic effects that is not manufactured for human consumption or inhalation; including, but not limited to, rubbing alcohol, gasoline, fingernail polish, paint and paint thinners, acetone, aerosol propellants, and chemical solvents.
- (2) Criminal possession of toxic substances shall be a Class A misdemeanor and a person convicted of the offense of criminal possession of toxic substances shall be imprisoned for a mandatory term of no less than ten (10) days and be fined in an amount no less than three hundred dollars (\$75.00).

4-807. Criminal Sale Of Drugs To A Minor

- (1) A person commits the offense of criminal sale of drugs to a minor if he/she knowingly, or should have known, that the person receiving the drug, was under the age of eighteen (18) years of age.
- (2) Criminal sale of drugs to a minor shall be a felony and a person convicted of criminal sale of drugs to a minor shall be imprisoned for a mandatory sentence of six (6) months and fined in the amount of five hundred dollars (\$500.00) not to be suspended or deferred.

4-808. Possession Of Drug Paraphernalia

- (1) A person commits the offense of possession of drug paraphernalia if he/she has any equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a drug. It includes, but is not limited to:
- (a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant that is a dangerous drug or from which a dangerous drug can be derived.
 - (b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting or producing, processing, or preparing drugs.
 - (c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant that is a drug.
 - (d) Testing equipment used, intended for use in identifying or in analyzing the strength effectiveness, or purity of drugs.
 - (e) Scales and balances used, intended for use, or designed for use in weighing or measuring drugs.
 - (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, dextrose, and lactose, used, intended for use, or designed for use in "cutting" drugs.
 - (g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana.
 - (h) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding drugs.
 - (i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of drugs.
 - (j) Containers and other objects used, intended for use, or designed for use in storing or concealing dangerous drugs.
 - (k) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, or other drugs as defined in this provision.
 - (l) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (m) water pipes or carburetor tubes and devices;

- (n) smoking and carburetor masks;
 - (o) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
 - (p) miniature cocaine spoons and cocaine vials;
 - (q) chamber, carburetor, electric, or air driven pipes;
 - (r) chillums
 - (s) bongs
 - (t) ice pipes or chillers;
- (2) Words or phrases used in this part that are not defined by this section have the meaning given there by the definitions contained in this drug provision unless the usage clearly indicates a different intent.
- (3) In determining whether an object is drug paraphernalia, the following shall be considered, in addition to all other logically relevant factors:
- (a) Statements by an owner or by anyone in control of the object concerning its use.
 - (b) Prior convictions, if any, of an owner or of anyone in control of the object, under any tribal, state, or federal law relating to any controlled substance or drug.
 - (c) The proximity of the object, in time and space, to a direct violation of this ordinance.
 - (d) The proximity of the object to dangerous drugs.
 - (e) The existence of any residue of dangerous drugs on the object.
 - (f) Direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom he/she knows, or should reasonably know, intends to use the object to facilitate a violation of this provision. The innocence of any owner or of anyone in control of the object as to a direct violation of this provision does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.
 - (g) Instructions, oral or written, provided with the object concerning its use.
 - (h) Descriptive materials accompanying the object which explain or depict use.
 - (i) National or local advertising concerning its use.
 - (j) The manner in which the object is displayed for sale.

- (k) Whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.
 - (l) Direct or circumstantial evidence of the ratio of sales of the objects to the total sales of the business enterprise.
 - (m) The existence and scope of legitimate uses for the object in the community.
 - (n) Expert testimony concerning its use.
- (4) Possession of drug paraphernalia shall be a Class A misdemeanor.
 - (5) Practitioners and agents lawfully acting in the usual course of their professional practice or business are exempt from this subsection.

4-809. Meth Precursor

- (1) **Products:** any single entity or combination pseudoephedrine (PSE) and ephedrine (EPH)
- (2) **Sales Limits:** single entity and/or combination PSE and EPH may be sold and purchased in quantities no greater than two (2) packages per single transaction. No single entity and/or combination PSE and EPH may be sold to a person under 18 years of age.
- (3) **Product Exemptions:** single entity and/or combination PSE and EPH may be sold and purchased in quantities no greater than two (2) packages per single transaction sales limit if the sale is made pursuant to a valid prescription drug order.
- (4) **Recordkeeping Requirements:** Retailers must require, obtain, and maintain a written record for purchases from the purchaser's government issued ID (name, date of birth, photo description), the product being purchased, quantity of product, date and time of sale. Records must be maintained for one (1) year. All packages must be sold behind the counter with a notice posted. Retailers are immune from a civil liability, hereunder, unless they are found to be acted by gross negligence or intentional, wanton, or willful misconduct.

4-810. Alternate Sentencing Authority

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

4-811. Seizures And Forfeiture Related To Drugs

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

- (a) All drugs seized pursuant to this section;
- (b) All money, raw materials, products, and equipment of any kind that is used or intended for use in manufacturing, preparing, cultivating, compounding, processing, production, delivering, importing, or exporting any drug in violation of in this section.
- (c) All property used or intended for use as container for anything listed in (a) or (b) above.
- (d) All conveyances which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of anything listed in (a) or (b) above.
- (e) All conveyances in which a drug is unlawfully kept, deposited, or concealed.
- (f) All books, records, and research products and materials, including formulas, microfilm, tapes, and dates that are used or intended for use in violation of this section.
- (g) All equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a drug.
- (h) Everything of value furnished or intended to be furnished in exchange for a drug in violation of this section; all proceeds traceable to such an exchange; and all money, negotiable Instruments, and securities used or intended to be used to facilitate any violation of this section.

(2) **Exceptions to Forfeiture:**

- (a) No conveyance used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this subsection unless it appears that the owner or other person in charge of the conveyance is a consenting party to or knowledgeable of a violation of this section.
- (b) No conveyance is subject to forfeiture under this subsection because of any act or omission established by the owner of the conveyance to have been committed or omitted without his/her knowledge or consent.
- (c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he/she neither had knowledge of nor consented to any violation of this section.

(3) When Property May Be Seized:

- (a) A law enforcement officer who has probable cause to make an arrest for a violation of this section, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a drug or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a drug shall seize the (conveyance so used or intended to be used. The officer shall immediately deliver a conveyance that is seized to the Bureau of Indian Affairs, Law Enforcement Services; Standing Rock Sioux Tribe, Law Enforcement Services, Fort Yates, North Dakota, to be held as evidence until forfeiture is declared or release is ordered.
- (b) All property subject to forfeiture under this Section may be seized by a law enforcement officer under a search warrant issued by the Tribal Court. Seizure without a warrant may be made if:

 - (i) The seizure is made incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;
 - (ii) The property subject to seizure has been the subject of a prior judgment in favor of the Tribe in a criminal proceeding or a forfeiture proceeding based on this Ordinance.
 - (iii) The law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety.
 - (iv) The law enforcement officer has probable cause to believe that the property was issued or is intended to be used in violation of the criminal provisions of this Ordinance.
 - (v) The law enforcement officer has probable cause to believe that the property will be removed from the Standing Rock Sioux Reservation if not seized at that time.

(4) Forfeiture of Property:

- (a) **Petition to institute forfeiture proceedings:**

 - (i) Any law enforcement officer or agency that seizes any property pursuant to this Section shall, within forty-five (45) days, file a petition to institute forfeiture proceedings with the Clerk of the Tribal Court.
 - (ii) The Clerk shall issue a summons at the request of the petitioning party who shall cause the same to be served upon all owners or claimants of the property.

- (b) Answer to allegations concerning the use of property.**
- (i) Within twenty (20) days after the service of the petition and summons, the owner or claimant of the property shall file an answer to the allegations.
 - (ii) No extension of time for filing the answer may be granted, and failure to answer within the specified time bars the owner or claimant from presenting any evidence at any subsequent hearing.
- (c) Procedure following answer or expiration of time for answering:**
- (i) There is a rebuttable presumption of forfeiture of property.
 - (ii) If an answer to the petition is not filed within twenty (20) days after the service of the petition and summons, the Court, upon motion, shall order the property forfeited to the Standing Rock Sioux Tribe.
 - (iii) If an answer is timely filed, the forfeiture proceeding shall be set for hearing, without a jury, not more than sixty (60) days after the answer is filed.
- (d) Proof required or permitted at hearing to rebut the presumption of forfeiture.**
- (i) An owner of the property, who has an answer on file, must prove that the conveyance was not used for the purpose charged.
 - (ii) An owner of the property, who has an answer on file, must prove, in the alternative, that the use of the property occurred without his/her knowledge or consent.
 - (iii) A claimant of a secured interest in the property, who has an answer on file, must prove that his/her interest is bona fide and that it was created without the knowledge that the property was being used or was to be used for the purpose charged.
- (e) Disposition of property following hearing.**
- (i) If the Court finds that the property was not used for the purpose charged or that the property was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.
 - (ii) If the Court finds that the property was used for the purpose charged and that the offender is a daughter or son of the owner, the property shall be forfeited.
 - (iii) If the Court finds that the property was used for the purpose charged and, that is/was with the knowledge or consent of the owner, the property shall be disposed of as follows:

- a. If proper proof of his/her claim is presented at the hearing by the holder of a security interest, the Court shall order the property released to the holder of the security interest with all title, right, and interest to the owner extinguished. If the value of the property is more than the security interest, the additional value shall be returned to the Standing Rock Sioux Tribal Court.
- b. If no claimant exists, and the Standing Rock Sioux Tribe wishes to retain the property for its official use, it may do so. If such property is not to be retained, it shall be sold.

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

- (i) Whenever property is seized, forfeited and sold under the provisions of this Ordinance, the net proceeds of the sale must be remitted to the Treasurer of the Standing Rock Sioux Tribe to be divided as follows:
 - a. One-half to the Tribal Court Account.
 - b. One-half to the Drug Enforcement Team to be used for drug enforcement purposes.

8-812. Violations Of Non-Indians

Any person who violates the provisions of this Code may also be assessed civil penalties, fines, possible lawsuit, and other punishments by the Court, as deemed necessary for the violation.

CHAPTER 9. OFFENSES INVOLVING GOVERNMENTAL PROCESSES

4-901. Bribery

Whoever intentionally offers, gives, or agrees to give to another, or solicits, accepts, or agrees to accept from another, any thing of value as consideration;

- (a) to influence the recipient's official action as a public servant; or
- (b) to induce the recipient's violation of a known legal duty as a public servant is guilty of bribery.

Bribery is a felony.

4-902. Interfering with Elections

Any person who:

- (a) coerces, threatens, injures or intimidates another person with respect to voting, qualifying to vote, qualifying or campaigning as or for a candidate for elective office, or qualifying or acting as an election official, in any primary, special or general election of

the Standing Rock Sioux Tribe; or

- (b) in connection with any election of the Standing Rock Sioux Tribe, makes or induces any false voting registration; or
- (c) in connection with any election of the Standing Rock Sioux Tribe, offers, gives, or agrees to give anything of pecuniary value to another person as consideration for the recipient's voting or withholding his or her vote for voting for or against any candidate or issue or for such conduct by another; or
- (d) solicits, accepts, or agrees to accept any thing of pecuniary value as consideration for conduct prohibited under Subsections (b) or (c); or
- (e) otherwise obstructs or interferes with the lawful conduct of an election of the Standing Rock Sioux Tribe or registration therefore is guilty of interfering with elections.

Interfering with elections in violation of Subsections (a), (b), (c) or (d) is a felony.

Interfering with elections in violation of Subsection (e) is a Class A misdemeanor.

4-903. Perjury

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

Perjury Is A Felony.

4-904. Criminal Contempt

All Courts of the Standing Rock Sioux Tribe have power to punish for contempt of their authority of the following offenses:

- (a) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; or
- (b) disobedience or resistance to any process, order, subpoena, warrant or command of the Court.

Criminal contempt is a Class A Misdemeanor.

4-905. Resisting Arrest

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

- (a) flees from a law enforcement officer, after being told by an officer that he or she is under arrest; or
- (b) creates a substantial risk of bodily harm to the officer or any other person, or employs

justifying substantial force to overcome the resistance;

Is guilty of resisting arrest.

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

Resisting arrest is a Class A Misdemeanor.

4-906. Escape

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

Escape is a felony.

4-907. Hindering a Law Enforcement Officer

A person who;

- (a) fails, when requested by a law enforcement officer, to assist in the arrest, capture or confinement of any person engaged in the commission of any offense, or who has committed, has been charged with, or has been convicted of any offense; or
- (b) fails to obey any other lawful order of a law enforcement officer; or
- (c) attempts or assists another to prevent an arrest

is guilty of hindering a law enforcement officer.

Hindering law enforcement officers is a Class A Misdemeanor.

4-908. Tampering With Witnesses or Information

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

- (a) testify falsely; or
- (b) withhold any testimony, information, document or thing; or
- (c) elude legal process summoning him to testify or supply evidence, or
- (d) absent himself from a judicial or official proceeding to which he has been legally summoned,

is guilty of tampering with witnesses or information.

Tampering with witnesses or informants is a felony.

4-909. Tampering With Physical Evidence

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

Tampering with physical evidence is a felony.

CHAPTER 10. DISORDERLY CONDUCT AND RELATED OFFENSES

4-1001. Disorderly Conduct

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

- (a) engages in fighting, or in violent, tumultuous, or threatening behavior; or makes unreasonable noise; or
- (b) in a public place, uses abusive or obscene language, or make an obscene gesture; or
- (c) obstructs vehicular or pedestrian traffic, or the use of a public facility; or
- (d) persistently follows another person in-or about a public place or places; or
- (e) creates a hazardous, physically offensive, or seriously alarming condition by any act which serves no legitimate purpose
- (g) makes an offensive gesture or symbol which by its nature tends to incite anger, unlawful conduct or breach of the peace by others; or
- (h) discharges a firearm or explosive or displays any weapon, potential weapon o or simulated deadly weapon with intent to cause alarm or in reckless disregard of causing alarm:

is guilty of disorderly conduct.

First offense Disorderly Conduct is a Class B misdemeanor. Subsequent offense are Class A misdemeanors.

4-1002. Disrupting Meetings or Processions

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

Disrupting meetings or processions is a Class A misdemeanor.

4-1003. Unlawful Dancing

Whoever maintains or allows public dances or dancing within the limits of the Standing Rock Sioux Reservation, except under permit issued by the Tribal Chairman, is guilty of unlawful public dancing; except that ceremonial and religious dancing shall not require a permit or be unlawful under this section. The permit shall fix the opening and closing hours for the dance.

Unlawful public dancing is a Class B misdemeanor for the first offense, and a Class A misdemeanor for each subsequent offense.

4-1004. Cruelty to Animals

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

Cruelty to animals is a Class B misdemeanor.

CHAPTER 11. GAMBLING

4-1101. Gambling

- (a) A person is guilty of gambling if he or she intentionally;
- (1) conducts a wagering pool or lottery for his or her own profit; or
 - (2) receives wagers for or on behalf of another person for his or her own profit; or
 - (3) alone or with others owns, controls, manages, or finances a gambling business; or
 - (4) knowingly leases or otherwise permits a place to be regularly used to carry on a gambling business or maintain a gambling house.
- (b) Gambling does not include:
- (1) lawful contests of speed, strength, or endurance in which awards are made only to entrants or to the owners of entrants; or
 - (2) pools in which no profit by the organizer is gained;
 - (3) lawful business transactions; or
 - (4) bingo, raffles or other like activities conducted by the Tribe, any subordinate tribal entity, any district organization or any entity chartered or owned in whole by the Tribe, or a religious, charitable or other nonprofit organization, provided that in the

case of bingo, the organization is in compliance with Title XXIII of this Code.

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

Gambling is a Class A misdemeanor.

CHAPTER 12. EXPLOITATION OF CHILDREN

4-1201. Contributing to the Delinquency of a Minor

Any person over the age of eighteen (18), including any parent or other person with lawful custody of a minor, who intentionally, negligently, or recklessly causes, encourages, contributes to or aids in a minor in committing a delinquent act or status offense, shall be guilty of Contributing to the Delinquency of a Minor.

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

4-1202. Failure to Support Dependent Persons

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

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

4-1203. Failure to Send Children to School

A person who, without justification or excuse, fails to send any child under his or her care to school, is guilty of failure to send children to school. For the purposes of this Section, a child is any person of an age seven (7) to sixteen (16) years.

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

4-1204. Child Abuse

- (1) Any parent or other person having custody of a child, who
- a) threatens the child with substantial harm; or
 - b) inflicts physical injury to the child to the extent that the child requires medical attention;
or
 - c) inflicts emotional harm or mental injury as indicated by an injury to the child's

intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's normal range of performance and behavior, with due regard to the child's culture; or

d) sexually assaults, molests or exploits the child; or

(2) Any person who intentionally physically assaults a woman who is pregnant is guilty of child abuse.

In addition to the penalty prescribed for such an offense, any person convicted of Child Abuse will be ordered by the Standing Rock Sioux Tribal Court to receive professional counseling and appropriate treatment. As used in subsection (2), it is no defense that the defendant did not know the victim was pregnant.

Child abuse is a Class A misdemeanor.

4-1205. Child Neglect

Any parent or other person having custody of a child, who;

- (a) fails or refuses to provide proper or necessary subsistence, supervision, education, medical care or any other care necessary for the child's health guidance or well being; or
- (b) abandons the child or subjects the child to mistreatment; or
- (c) fails to provide proper parental care; or
- (d) provides an environment that is injurious to the child's welfare; or
- (e) consumes excessive amounts of intoxicating beverages or drugs while pregnant is guilty of child neglect.

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

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

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

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

4-1207. Street Gang Crime

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

Criminal street gang means any ongoing organization or group of three or more persons, whether formal or informal, that acts in concert or agrees to act in concert with purpose that any of those persons alone or in any combination commit or will commit a crime.

Street gang crime is a Class A misdemeanor.

4-1208. Encouraging Minors to Participate in Street Gang Crime

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

Encouraging minors to participate in street gang crime is a Class A Misdemeanor.

CHAPTER 13. LIQUOR LAWS

4-1301. Failure to Comply with Tribal Liquor Laws

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

- (a) sells any intoxicating beverage within the Standing Rock Indian Reservation without a license from the Tribe; or
- (b) sells any intoxicating beverage to a person who is under the age of twenty-one (21).

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

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

4-1302. Unlawful Use of Intoxicating Beverages by Minors

A person under the age of twenty-one (21) who;

- (a) purchases or has in his or her possession any intoxicating beverage; or
- (b) enters any establishment where intoxicating beverages are sold; or
- (c) consumes any intoxicating beverages is guilty of unlawful use of intoxicating beverages

In addition to the penalty prescribed for such an offense, all alcoholic beverages possessed in violation of this Section will be forfeited to the Tribe, and disposed of in accordance with the order of the Court.

Unlawful possession of intoxicating beverages minors is a Class B misdemeanor for the first offense. Subsequent offenses shall be a Class A misdemeanor.

4-1303. Selling Intoxicating Beverages to Pregnant Women

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

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

4-1304. Selling Tobacco Products to Minors

Any retailer who sells tobacco products to a minor under the age of eighteen is guilty of selling tobacco products to minors.

Selling tobacco products to minors is a Class B misdemeanor for the first offer subsequent offenses are a Class A misdemeanor.

CHAPTER 14. PENALTIES

4-1401. Penalties

"Offenses" are divided into three classes, which are denominated and subject to maximum penalties, as follows:

- (a) **Felony** - for which a maximum penalty of one (1) year imprisonment, a fine of five thousand dollars (\$5,000.00), or both, may be imposed.
- (b) **Class A misdemeanor** - for which a maximum penalty of six (6) months imprisonment, a fine of one thousand dollars (\$1,000.00), or both, may be imposed.
- (c) **Class B misdemeanor**, for which a maximum penalty of five hundred dollars (\$500.00) may be imposed.

CHAPTER 15. GANG AND GANG RELATED ACTIVITIES

4-1501. Definitions

- (a) **"Criminal gang"**: Any ongoing organization, association in fact or group of two or more persons, whether formal or informal, which engages in or has as one of its substantial purposes the commission of one or more criminal offenses, attempted commission, facilitation or solicitation of an criminal act if the Youth were an Adult, proscribed by the Ordinance or the Standing Rock Sioux Tribe Code of Justice and has at least one

individual who is a criminal gang member.

- (b) **"Gang Member"**: shall mean an individual to whom two (2) or more of the following criteria that indicate gang membership apply:
- (1) **Self-Proclamation**
 - (2) **Witness testimony or official statement**
 - (3) **Written or electronic correspondence**
 - (4) **Paraphernalia or photographs**
 - (5) **Tattoos**
 - (6) **Clothing or colors**
 - (7) **Any other indicia of gang activity**
- (c) **"Criminal Act"** means any act punishable by a term of detention, jail, or imprisonment under the laws of the Standing Rock Sioux Tribe, of any state, or of the United States.
- (d) **"Gang-Related offense"** means any offense under this Code committed by a Youth with the intent to promote or further the objectives of a gang.
- (e) **"Drive- by Shooting"**: The discharge of a firearm, paintball gun, BB or pellet gun or the propulsion of an explosive device from a motor vehicle whether the vehicle is moving or stopped at the time of discharge.
- (f) **"Loiter"**: To remain in anyone place with no apparent purpose.
- (g) **"Participating in a criminal gang"**:
- (i) Intentionally organizing, managing, directing, or supervising a criminal gang with the intent to promote or further the criminal objectives of the criminal gang;
 - (ii) knowingly enticing or inducing others to engage in violence or intimidation to promote or further the criminal objectives of the criminal gang;
 - (iii) furnishing advice or direction in the conduct, financing or management of a criminal gang's affairs with the intent to promote; or further the objectives of a criminal gang;
 - (iv) hiring, engaging, or using a minor for any conduct preparatory to or in furtherance of any offense in this section; or
 - (v) Committing, attempting to commit, or soliciting one or more criminal offenses proscribed by this Ordinance or the Standing Rock Sioux Tribe Code of Justice with the intent of promote or advance the objectives or a criminal gang.

4-1502. Participation In a Street Gang

- (a) **Violation.** Any person, who is a participant in a criminal gang as defined in Section 1 (d) above, shall be guilty of a felony.
- (b) **Evidence.** Evidence concerning indicia of gang membership including, but not limited to, possession of gang-related paraphernalia, gang-related tattoos, or gang-related clothing may be offered, with proper foundation, therefore, for submission into evidence in any case brought under this Ordinance.
- (c) **Penalties.** Any person found guilty of participating in a criminal gang shall be sentenced to: imprisonment for a period of twelve (12) months and to a fine not to exceed five thousand dollars (\$5,000.00), together with court costs, provided that any person convicted of an offense defined in this chapter shall not be eligible for suspension of sentence, probation, parole, or any other release from custody until the sentence imposed by the Court is fully served. Any sentence of imprisonment imposed pursuant to this Section shall be in addition and consecutive to any sentence imposed for and underlying offense committed in the pattern of criminal gang activity.
 - (i) Any person who is convicted of a felony or an attempted felony which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the intent to promote, further, or assist in the affairs of a criminal street gang, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be imprisoned for not less than one year nor more that one-half maximum term of imprisonment provided for that offense.
 - (ii) Any person who is convicted of an offense other than a felony which is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct or enterprise by gang members, shall, in addition and consecutive to the penalty provided for that offense, be imprisoned for an additional period of six months.

4-1503. Hiring, Engaging, or Using a Minor To Participate In a Street Gang

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

4-1504. Drive By Shootings

- (a) **Violation.** Any person who of his or her own will is physically present in a vehicle used by a drive-by shooting as defined in section 1 (b), above, shall be deemed guilty of a felony. .
- (b) **Penalties.** Any person found guilty of participating in a drive-by shooting shall be sentenced to: imprisonment for a period of twelve (12) months and to a fine not to exceed five thousand dollars (\$5,000.00), together with court costs, provided that any person convicted of an offense defined in this chapter shall not be eligible for suspensions of sentence, probation, parole, or any other release from custody until the sentence imposed by the Court is fully served.

4-1505. Gang Related Congregations

- (a) **Violation.** Whenever a community resource officer, security officer or law enforcement officer observes a person whom he or she reasonably believes to be a criminal gang member loitering in any public place with one or more other persons, he or she shall order all such persons to disperse and remove themselves from the area. Any person who does not promptly obey such an order is in violation of this section.
- (b) **Penalties.** Any person who violates this section is subject to a fine of not less than \$100.00 and not more than \$500.00 for each offense, or imprisonment for not more than six months, or both. In addition to or instead of the above penalties, any person who violates this section may be required to perform up to 120 hours of community service.

Violation of this section is a Class A misdemeanor.

4-1506. Gang Activity and Forfeiture

- (a) Any firearm, paintball gun, BB or pellet gun, ammunition to be used in a firearm, or dangerous weapon in the possession of a member of a criminal street gang as defined by Standing Rock Sioux Tribe Code of Justice Title IV Section 4-702, may be seized by any law enforcement agency or peace officer when the law enforcement agency or peace officer reasonably believes that the firearm, or dangerous weapon is or will be used in the commission of criminal activity.
- (b) The tribal prosecutor or presenting officer shall initiate, in a civil action, forfeiture proceedings by petition in the tribal courts as to any property seized pursuant to the provisions of this Section within ninety (90) days of seizure.
- (c) The tribal prosecutor or presenting officer shall provide notice of the filing of the petition to those members of the gang who become known to law enforcement officials as a result of the seizure and related arrests, and to any person deemed by law enforcement officials to be the owner of any property involved. After initial notice of the filing of the petition, the court shall assure that all persons so notified continue to receive notice of all subsequent proceedings related to the property.
- (d) Any person who claims an interest in any seized property shall, in order to assert a claim that the property should not be forfeited, file a notice with the court, without the necessity of paying costs, of the intent to establish either of the following:
- (1) That the persons asserting the claim did not know, and could not have known of its use in the commission of a pattern of criminal gang activity.
 - (2) The person alleges the property interest was acquired by or in possession of criminal gang members through theft, burglary or other unlawful means.
 - (3) That the law enforcement officer lacked the requisite reasonable belief that the property was or would not be used in the commission of a pattern of criminal gang activity.

4-1507. Juvenile Gatherings

- (a) Any private place or premises within the boundaries of the Standing Rock Sioux Tribe which is used as the site of a juvenile gathering is hereby declared to be a public

nuisance. No person shall maintain such a nuisance. Whenever such a nuisance is found to exist within the boundaries of the Standing Rock Sioux Tribe Reservation, the law enforcement services of the Standing Rock Sioux Tribe shall give the person(s) responsible for the juvenile gathering notice to abate the nuisance:

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

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

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

4-1508. Premises Used By Criminal Street Gang: Nuisances. Actions for Injunction and Other Damages. and Other Remedies for Unlawful Use. Exceptions

- (a) Every private building or place used by members of a criminal street gang for the commission of criminal gang activity is a nuisance and may be the subject of an injunction or cause of action for damages as provided for in this Chapter.
- (b) Any person may file a petition for injunctive relief with the appropriate court seeking eviction from or closure of any premises used for commission of criminal activity by a criminal street gang. Upon proof by the plaintiff that the premises are being used by members of a criminal street gang for the commission of criminal street gang activity, the court may order the owner of record of the premises to remove or evict the persons from the premises and order the premises sealed, prohibit further use of the premises, or enter such order as may be necessary to prohibit the premises from being used for the commission of criminal gang activity.
- (c) Any action for injunction, damages, or other relief filed pursuant to this Section shall proceed according to the provisions of the Standing Rock Sioux Tribe Code of Justice.
- (d) The court shall not issue an injunction or assess a civil penalty against any owner of record unless that person knew or should have known or had been notified of the use of

the premises for criminal gang activity. Any injunctive relief other than that specifically authorized in Subsection (b) of this Section shall be limited to that which is necessary to protect the health and safety of the residents or the public or that which is necessary to prevent further criminal activity.

- (e) The court has previously issued injunctive relief ordering the owner of record of the premises to close the premises or otherwise to keep the premises from being used for the commission of criminal gang activity, the court, upon proof that the owner of record has failed to comply with the terms of the injunction and that the premises continue to be used for the commission of a gang activity, may do one or more of the following:
- (1) Order the premises demolished and cleared at the cost of the owner.
 - (2) Order the premises sold at public auction and the proceeds from the sale, minus the costs of the sale and the expenses of bringing the action, delivered to the owner.
 - (3) Order the owner of record to pay damages to persons or local governing authorities who have been damaged or injured or have incurred expense as a result of the owner's failure to take reasonable steps or precautions to comply with the terms of any injunction issued pursuant to the provisions of this Chapter.
 - (4) Assess a civil penalty not to exceed five thousand dollars against the defendant based upon the severity of the nuisance and its duration. In establishing the amount of any civil penalty, the court shall consider all of the following factors:
 - i. the actions taken by the defendant to mitigate or correct the problem at the private building or place or the reasons why no such action was taken.
 - ii. any other factor deemed by the court to be relevant.

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

CHAPTER 16. SEX OFFENDER REGISTRATION

4-1601. Definitions

The following are the definitions governing this Code, Title IV, Chapter 16:

- (1) **Sex Offender** - The term "sex offender" means an individual who was convicted of a sex offense.
- (2) **Tier I Sex Offender** - The term "tier I sex offender" means a sex offender other than a tier II or tier III sex offender.
- (3) **Tier II Sex Offender** - The term "tier II sex offender" means a sex offender other than a tier III sex offender whose offense is punishable by imprisonment for more than 1 year and;

- (A) is comparable to or more severe than the following offenses, when committed against a minor, or an attempt or conspiracy to commit such an offense against a minor:
 - (i) sex trafficking (as described in 18 U.S.C.A. § 1591);
 - (ii) coercion and enticement (as described in 18 U.S.C.A. § 2422(b));
 - (iii) transportation with intent to engage in criminal sexual activity (as described in 18 U.S.C.A. § 2423(a));
 - (iv) abusive sexual contact (as described in 18 U.S.C.A. § 2244);
 - (B) involves -
 - (i) use of a minor in a sexual performance;
 - (ii) solicitation of a minor to practice prostitution; or
 - (iii) production or distribution of child pornography; or
 - (C) occurs after the offender becomes a tier I sex offender.
- (4) **Tier Iii Sex Offender** - The term “**tier III sex offender**” means a sex offender whose offense is punishable by imprisonment for more than 1 year and—
- (A) is comparable to or more severe than the following offenses, or an attempt or conspiracy to commit such an offense:
 - (i) aggravated sexual abuse or sexual abuse (as described in 18 U.S.C.A. §§ 2241 and 2242); or
 - (ii) abusive sexual contact (as described in 18 U.S.C.A. § 2244) against a minor who has not attained the age of 13 years;
 - (B) involves kidnapping of a minor (unless committed by a parent or guardian); or
 - (C) occurs after the offender becomes a tier II sex offender.
- (5) **Amie Zyla Expansion Of Sex Offense Definition** -
- (A) **Generally** - Except as limited by subparagraph (B) or (C), the term “**sex offense**” means -
 - (i) a criminal offense that has an element involving a sexual act or sexual contact with another;