

Pyramid Lake Paiute Tribal Council

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RESOLUTION NO.: PL 081-19

RESOLUTION OF THE TRIBAL COUNCIL OF THE PYRAMID LAKE PAIUTE TRIBE NIXON, NEVADA

WHEREAS, the Pyramid Lake Paiute Tribe is organized pursuant to the provisions of Section 16 of the Indian Reorganization Act (25 U.S.C. § 476) and is federally recognized by the United States Government through the Secretary of the Interior and the Bureau of Indian Affairs; and possesses attributes of sovereignty over both the members and territory.

WHEREAS, the Pyramid Lake Paiute Tribe, pursuant to Article VI, Section 1 of the Constitution and By-laws of the Pyramid Lake Paiute Tribe, authorized the Pyramid Lake Tribal Council to act on behalf of the Pyramid Lake Tribe, and to promulgate ordinances to safeguard the peace and safety of residents of the Reservation and to establish courts for the adjudication of claims and disputes; and

WHEREAS: pursuant to these powers, the Tribal Council has created the Pyramid Lake Law & Order Code and other laws and ordinances to govern the conduct of people within the Tribe's Reservation; and

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

WHEREAS: to meet this goal, the Pyramid Lake Law and Order Committee has recommended that the Tribal Council incorporate the revised Chapter 4 Criminal of the Law and Order Code 2013 to current code.

WHEREAS: the revised Pyramid Lake Law and Order Chapter 4 Criminal Code 2013 was posted for at least thirty days to allow for public comment. No comments were received by the Law and Order Committee and the Committee submitted its recommendation to the Tribal Council;

NOW, THEREFORE BE IT RESOLVED, that the Pyramid Lake Paiute Tribal Council hereby accepts the recommendation of the Law and Order Committee and hereby adopts the revised Chapter 4 Criminal of the Pyramid Lake Law and Order Code 2013.

BE IT FURTHER RESOLVED, the Tribal Chairman or designee is hereby authorized to effectuate any and all administrative actions necessary for implementation of this resolution.

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

CERTIFICATION

It is hereby certified that the foregoing resolution of the Pyramid Lake Paiute Tribal Council, governing body of the Pyramid Lake Paiute Tribe, composed of ten members, of whom nine (9) constituting a quorum were present at a meeting duly held on the 6th day of September, 2019 was adopted by the affirmative vote of five (5) FOR and three (3) AGAINST, with zero (0) ABSTENTIONS; pursuant to the authority contained in the Constitution and By-laws of the Pyramid Lake Paiute Tribe.



Brenda A. Henry, Tribal Secretary
Pyramid Lake Paiute Tribal Council

CHAPTER 4

CRIMINAL

PART 1 GENERAL PROVISIONS

3.4.102 Name of Chapter

This Chapter may be cited as the Criminal Code.

3.4.104 Application of Chapter

This Chapter shall apply to all Indian persons violating its provisions within the exterior Reservation boundaries.

3.4.106 Scope, Purpose and Construction

A. This Chapter governs the procedure in all criminal proceedings in the Court and all preliminary or supplementary procedures as specified herein.

B. Every proceeding in which a person is charged with a criminal offense of any degree and brought to trial and punished is a criminal proceeding.

C. This Chapter is intended to provide for the determination of every criminal proceeding. It shall be construed to secure simplicity in procedure, fairness in the administration of justice and the elimination of unjustifiable expense and delay.

D. The provisions of this Chapter shall be construed in accordance with Tribal customs and traditions to achieve the following principles and purposes to:

1. Forbid and prevent the commission of offenses and give fair warning of conduct which is declared to be an offense;
2. Define adequately the conduct and mental state which constitute an offense and to safeguard permitted conduct;
3. Prescribe penalties which are proportionate to the seriousness of the offense and which permit recognition of differing rehabilitative needs of individual offenders while at the same time recognizing the needs of the entire Tribe and individual members for protection from offenders;
4. Prevent arbitrary and oppressive treatment of persons accused or convicted of offenses and to promote the correction and rehabilitation of such persons; and
5. Protect any member of the Tribe whose health and welfare may be adversely affected or threatened due to abuse, neglect or exploitation by family, household members, or other person in a legal or contractual position by providing physical, mental or medical assistance and support to the affected person.

3.4.108 Exclusiveness of Offenses

No conduct constitutes a criminal offense unless so declared by this Chapter, by any Tribal resolution or ordinance, or by Federal law; however, this provision does not affect the power of the Court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment or decree.

3.4.110 Prosecution for Multiple Offenses

When the conduct of an offender establishes the commission of more than one offense, the offender may be prosecuted separately for each offense. The offender, however, may not be convicted of more than one offense if:

- A. One offense is included in the other and is a lesser included offense;
- B. One offense consists only of conspiracy or some other form of preparation for committing another offense;
- C. Inconsistent findings of fact are not required to establish the commission of the offenses;
- D. The offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other, to prohibit a specific instance of such conduct; or
- E. The offense is defined to prohibit a continuing course of conduct and the offender's course of conduct was interrupted unless the law provides that the specific periods of such conduct constitute separate offenses.

3.4.112 Limitations of Prosecution Based on the Same Facts and Transactions

Unless requested by the offender or unless justice so requires, an offender shall not be subject to separate trials for multiple offenses based on the same conduct, or arising from the same transaction, if such offenses are known to the Tribal Prosecutor at the time the first trial commences and such offenses are within the jurisdiction of the Tribal Court.

3.4.114 Classification of Offenses and Sentencing

Offenses shall be classified as follows:

- A. Class A Offenses: Maximum sentence: One (1) year incarceration and/or maximum fine: Five Thousand Dollars (\$5,000.00)
- B. Class B Offenses: Maximum sentence: Two-hundred, seventy (270) days incarceration and/or maximum fine: Four Thousand Dollars (\$4,000.00)
- C. Class C Offenses: Maximum sentence: One-hundred, eighty (180) days incarceration and/or maximum fine: Two Thousand Dollars (\$2,500.00)
- D. Class D Offenses: Maximum sentence: Ninety (90) days incarceration and/or maximum fine: One Thousand Dollars (\$1,000.00)

E. Class E Offenses: Fine up to One Thousand Dollars (\$1,000.00) without incarceration.

F. The fines above may be imposed in addition to any assessment of costs or other civil penalties and in addition to any amounts ordered to be paid as restitution.

G. Any person adjudged guilty of an offense under the Criminal Code shall be sentenced in accordance with this Section, unless otherwise specified by a particular Code provision.

3.4.116 General Time Limitations

A. Unless otherwise specified in a particular section:

1. Prosecution for Class A offenses must be commenced within three (3) years after the alleged offense is committed;
2. Prosecution for Class B offenses must be commenced within two (2) years after the alleged offense is committed;
3. Prosecution for Class C and Class D offenses must be commenced within one (1) year after the alleged offense is committed;
4. If the victim is a minor or mentally impaired at the time that the offense occurred, prosecution may be commenced within one (1) year after the legal disability terminates.

B. The time limitations are tolled under the following conditions:

1. During any period on which the offender is not usually and publicly residing within the exterior Reservation boundaries or is beyond the jurisdiction of the Court;
2. During any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or
3. During a prosecution pending against one offender for the same conduct, occurrence or event, even if the prosecution is dismissed.

C. An offense is committed either when those elements of the offense occur or when the offense is based upon a continuing course of conduct, at the time the course of conduct is terminated. Time begins to run on the day after the offense is committed.

D. A prosecution is commenced when either a charge or a complaint is filed with the Tribal Court.

3.4.118 Other Remedies

This Code does not bar, suspend, or otherwise affect any liability for or right to damages, penalty, forfeiture, or other remedy authorized by law to be recovered. Civil liability is not merged into the criminal offense.

3.4.120 Gender, Number and Tense

Except as otherwise expressly provided in a particular statute or required by the context:

- A. The masculine gender includes the feminine and neuter genders.
- B. The singular number includes the plural number, and the plural includes the singular.

3.4.122 Severability

If any clause, sentence, paragraph, section, or part of this Chapter shall, for any reason be adjudicated by any court of competent jurisdiction, to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgment shall have been rendered.

3.4.124 Proof of Jurisdiction

Whenever status as a non-Indian is not immediately clear or resolved, any person, otherwise subject to arrest, detention, investigation or other action under the laws of the Tribe may be dealt with by law enforcement authorities as if jurisdiction existed. The burden of raising the issue of non-jurisdiction (status as a non-Indian) shall be upon the person claiming the exemption from jurisdiction, but the burden of proof of jurisdiction (status as an Indian) remains with the prosecution.

PART 2 GENERAL PRINCIPLES OF CRIMINAL LIABILITY

3.4.200 Definitions

A. "Abuse" includes, but is not limited to the: Infliction of physical or mental injury; or the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of a person.

B. "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication and, where relevant, includes a failure or omission to act.

C. "Aggravated assault" means to knowingly or intentionally cause another to be in fear or apprehension of serious bodily harm by use of a weapon.

D. "Aggravated battery" means a criminal battery accompanied by circumstances that make it more severe, such as the use of a deadly weapon or the fact that the battery resulted in serious bodily harm.

E. "Another" means any person or persons, as defined in this Code, other than the offender.

F. "Assault" means the threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact; An attempt to commit batter, requiring the specific intent to cause physical injury.

G. "Battery" means to knowingly or intentionally cause bodily harm to another; negligently cause bodily harm to another with a weapon; or knowingly or intentionally have physical contact of an insulting or provoking nature with another without his or her consent.

H. "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefits to any other person or entity in whose welfare the beneficiary is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate promises to support or oppose.

I. "Bodily harm" or "bodily injury" means any physical pain, illness or any impairment of physical conditions, including mental illness or mental impairment.

J. "Cohabit" means to live together in an arrangement whereby the parties voluntarily assume the rights, duties and obligation; which are normally manifested by married persons.

K. "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective, or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or persons, or the same property, repeatedly.

L. "Conduct" means an act, action or series of actions and the mental state of intending to carry out the acts, action, or series of actions.

M. "Controlled substance" means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of 21 U.S.C. 812. The term does not include distilled spirits, wine, malt beverages, or tobacco.

N. "Conviction" means a judgment or sentence entered upon a plea of "guilty" or upon a verdict finding an offender's guilt rendered by a legally-constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

O. "Criminal defamation" means to knowingly and with malicious intent, to communicate to any person orally or in writing any information which one knows or should know to be false and which impeaches the honesty, integrity, virtue or reputation, or publishes the natural defects of one who is alive, or who has not been declared missing or dead for a period exceeding twenty (20) years, and thereby expose him to public hatred, contempt or ridicule. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown by way of defense.

P. "Deceit" means a person knowingly and intentionally causes harm or damage to another by: Creating or confirming in another an impression which is false and which the offender does not believe to be true; failing to correct a false impression which the offender previously created or confirmed; preventing another from acquiring information pertinent to the disposition of the property involved; selling or otherwise transferring or encumbering property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property whether such impediment is of value or is not a matter of official record; or, promising performance which the offender does not intend to perform or knows will not be performed. Mere failure to perform, without additional evidence, is not conclusive proof that the offender did not intend to perform.

Q. "Deprive" means to knowingly and intentionally withhold the property of another permanently; for such a period as to appropriate a portion of its value; or, with the purpose to restore it only upon payment of a reward or other compensation.

R. "Enter or remain unlawfully" means to enter and remain in or upon any vehicle, occupied structure, or premises without invitation or privilege to do so in accordance with lawful public or private authority.

S. "Exploitation" or "Exploit" means the unjust use of an individual's money or property for another's advantage by means of duress, menace, fraud, or undue influence.

T. "Explosive" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing a destructive effect and which contains compounds or ingredients in such proportions, quantities, or packing that ignition by fire, friction, concussion, percussion, or a detonator on any part of the compound or mixture may cause a destructive effect on surrounding objects or persons.

U. "Family or household member" means a spouse, former spouse, person related by blood or marriage, person residing with the offender due to adoption or foster placement, any person currently cohabiting with the offender, or any person who has cohabited with the offender at any time during the year immediately preceding the commission of any alleged offense.

V. "Force" means the infliction, attempted infliction, or threatened infliction of bodily harm or injury by a person, or the commission or threat of any other crime by a person against the complainant or another which causes the complainant to reasonably believe that the person has the present ability to execute the threat, thereby causing the complainant to submit.

W. "Harm" means loss, disadvantage, or injury, including loss, disadvantage, or injury to any person or entity in which the individual has an interest.

X. "Harassment" means to knowingly, with the intent and purpose to annoy another, to insult, taunt, or challenge another in a manner likely to provoke a violent or disorderly response; or to make repeated communications anonymously or at extremely inconvenient hours, or in an offensively course language.

Y. "Intentionally" means an action undertaken willfully and with the conscious goal to engage in certain conduct or to cause a certain result. When a particular intent is an element of an offense, the element is established even if the intent is conditional, unless the condition negates the harm or evil sought to be prevented by the law defining the offense. The terms "purposefully" and "intentionally" shall be interpreted as being identical.

Z. "Intimate parts" includes the genital area, the groin, inner thigh, buttocks, or breast of a human being.

AA. "Intoxicating substances" means a compound, such as beer, wine or liquor, produced and sold for human consumption and containing more than .5% alcohol by volume.

BB. "Involuntary act" means any act which is: A reflex or convulsion; a bodily movement during unconsciousness or sleep; conduct during hypnosis or resulting from hypnotic suggestion; or a bodily movement that is otherwise not consciously or habitually a product of the effort or determination of the person.

CC. "Knowingly" imports a knowledge that facts exist which constitutes the act or omission of a crime, and does not require knowledge of its unlawfulness. Knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent person upon inquiry.

DD. "Law enforcement officer" means any person who by virtue of his or her office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

EE. "Mentally impaired" means that a person suffers from a mental disease or defect which renders the person incapable of appreciating the nature of his conduct.

FF. "Mentally incapacitated" means that a person is rendered temporarily unable to appreciate or control his conduct due to the influence of a controlled substance or organic condition.

GG. "Mental injury" means an identifiable and substantial impairment of an individual's intellectual or psychological function.

HH. "Neglect," "negligence," "negligent" and "negligently" import a want of such attention to the nature or probable consequences of an act or omission as an ordinarily prudent person usually exercises in his own business.

II. "Nonconsensual" means against the victim's will or under conditions in which a person knows or reasonably should know that the victim is mentally or physically incapable of resisting, consenting or understanding the nature of the person's conduct.

JJ. "Obtain" means a person knowingly or intentionally tries to: Bring about a transfer of interest or possession in property, whether to the offender or to another; or, secure the performance of labor or services, whether for the offender's benefit or the benefit of another.

KK. "Obtain or exert unauthorized control" includes, but is not limited to, the taking, carrying away, sale, conveyance, transfer, or other appropriation of title to, interest in, or possession of property.

LL. "Offender" means a person who has been or is liable to be arrested, charged, convicted or punished for violation of a defined criminal offense.

MM. "Offense" means a crime for which a sentence of time in jail, a fine and/or restitution may be imposed.

NN. "Official detention" means arrest, detention in any facility for custody of persons under charge or conviction of a crime or any other detention for law enforcement purposes, excluding supervision of probation or parole, or release on bail.

OO. "Older person" means a member of the Pyramid Lake Paiute Tribe or other person residing on the Pyramid Lake Paiute Tribe Reservation who is: Sixty (60) years or older; determined by the Court to be an elder; or, at least forty-five (45) years of age and unable to protect himself or herself from abuse, neglect or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by age or disease.

PP. "Owner" means a person who has legal or equitable title to tangible or intangible property and has the exclusive right to possess, enjoy and dispose of that property.

QQ. "Person" means an individual, business association, partnership, corporation, or other legal entity, and individual acting in an agency capacity for any of the above.

RR. "Possession" is the knowing control of any property.

SS. "Property" means tangible or intangible things of value.

TT. "Protective order" is a court order restraining a person from engaging in the commission or continuance of some act which may result in harm to another.

UU. "Public nuisance" includes, but is not limited, to: a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by any number of persons, even if the extent of the annoyance or damage inflicted upon individuals is unequal; Persons gathering on any premises for the purpose of engaging in unlawful conduct; or, a condition making the passage of any public right-of-way, or waters used by the public, dangerous.

VV. "Public places" means any place to which the public or any group of substantial size has legal access.

WW. "Public servant" means any officer or employee of the Tribe including, but not limited to, a member of the Tribal Council, a judge, anyone who has been elected or designated to become a public servant, or any person participating as a juror, adviser, consultant, administrator, executor, guardian, or court-appointed fiduciary.

XX. "Reasonable apprehension" is deemed to exist, but not limited to, in any situation where a person knowingly points a firearm at or in the direction of another person,

whether or not the offender believes the firearm to be loaded. "Reasonable apprehension" is a question of fact to be determined by the trier of fact.

YY. "Restitution" means repayment by the offender, in either money or services, to the victim, society or any public agency for any loss, damage or injury caused by the commission of an offense.

ZZ. "Serious bodily harm" or "serious bodily injury" means physical damage to a person which creates the risk of death, causes serious permanent or protracted loss or impairment of the function or process of any bodily member or organ, causes permanent disfigurement, or causes serious mental illness or impairment.

AAA. "Sexual conduct" means ordinary sexual intercourse; anal intercourse; fellatio, cunnilingus or other oral-genital contact; physical contact by a person with the unclothed genitals or pubic area of another person for the purpose of arousing or gratifying the sexual desire of either person; penetration, however slight, by a person of an object into the genital or anal opening of the body of another person for the purpose of arousing or gratifying the sexual desire of either person; masturbation or the lewd exhibition of unclothed genitals; or sado-masochistic abuse.

BBB. "Solicit" or "solicitation" means knowingly or intentionally commanding, authorizing, urging, inciting, requesting, or advising another to commit an offense.

CCC. "Threat" means a knowing expression of intention to: inflict physical harm on any person or property of another.

DDD. "Weapon" means any instrument, firearm, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

EEE. "Witness" means any person whose testimony is desired or necessary in any official proceeding, in any investigation or in a criminal prosecution or proceeding.

3.4.202 Burden of Proof

The offender in a criminal proceeding is presumed innocent until each element of the offense with which he or she is charged is proved beyond a reasonable doubt. In the absence of such proof, the offender shall be acquitted. When a convicted offender has been released and placed on probation, the prosecution need only prove for a probation violation that the violation occurred by a preponderance of the evidence.

3.4.204 Mental State

A person is not guilty of an offense unless the person acts intentionally, knowingly, or negligently, as the Code may provide, with respect to each element of the offense, or unless the person's acts constitute an offense involving strict liability.

3.4.206 Strict Liability

A person may be guilty of an offense without having the requisite mental state only if the offense is a Class One (1) crime and the Criminal Code provision defining the offense clearly indicates the intent of the Pyramid Lake Paiute Tribe to impose strict liability for the conduct described.

3.4.208 Affirmative Act

An element of every offense is an affirmative action, which includes an obligation to perform or an omission to perform a duty which the person is mentally, physically and financially able to perform.

3.4.210 Proximate Cause

A. Conduct is the proximate cause of an event if:

1. Without the conduct the event would not have occurred; and
2. Any additional causal requirements imposed by the specific Code provision defining the offense are satisfied.

B. If an element of an offense requires that an act causing the result is undertaken knowingly and intentionally and the result is not within the contemplated purpose of the offender, the element of intent can nevertheless be established if:

1. The final result differs from the contemplated result only in the respect that a different person or different property is affected or that the injury or harm caused is less than originally contemplated; or
2. The result involves the same kind of harm or injury as contemplated but the precise harm or injury is different or occurred in a different way, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

C. If negligently causing a particular result is an element of an offense and the offender is not aware nor should have been aware of the probable result, negligence can nevertheless be established if the actual result:

1. Differs from the probable result only in the respect that a different person or different property is affected or that the injury or harm is less; or
2. Involves the same kind of injury or harm as the probable result, unless the actual result is too remote or accidental to have a bearing on the offender's liability or the gravity of the offense.

3.4.212 Consent

A. The complainant's consent to the performance of the conduct constituting an offense or to the result is a defense.

B. Consent is ineffective if it is:

1. Given by a person who is not legally authorized to approve of the conduct constituting an offense;

2. Given by a person who by reason of youth, mental impairment, or mental incapacity is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged;
3. Induced by force, duress, or deception;
4. Qualified by definition as having been given "without consent;" or
5. Against public policy to permit the conduct or the resulting harm, even though consent was given.

3.4.214 Ignorance or Mistake of Fact

Ignorance or mistake as to a matter of fact is a defense only if the ignorance or mistake negates a specific mental state required to establish the offense, or if the law specifically provides that ignorance or mistake of fact is a defense.

3.4.216 Ignorance or Mistake of Law

Ignorance or mistake as to a matter of law is a defense only when the law defining the offense has not been published or reasonably made available prior to the person's conduct, or if the person acted in reasonable reliance upon an official statement of law rendered by a Tribal Judge.

3.4.218 Responsibility

A person who is in an intoxicated or drugged condition is criminally responsible for his or her conduct unless such conduct is involuntarily produced and deprives the person of the capacity to appreciate the criminality of the conduct or to conform his or her conduct to the requirements of law. An intoxicated or drugged condition may be taken into consideration in determining the existence of a mental state which that is an element of the offense.

3.4.220 Duress

It is a defense that the person engaged in conduct alleged to constitute an offense was coerced to do so by the use of, or threat to use unlawful force against his person or the person of another, which a law-abiding, reasonable person would have been unable to resist. It is not a defense that a woman acted on a command of her husband, or a man on command of his wife, unless the circumstances amount to duress as defined above. The defense of duress is unavailable where the conduct constituting the offense causes or threatens to cause death or serious bodily harm to some other person.

3.4.222 Entrapment

A law enforcement officer perpetrates an entrapment if he induces or encourages another person to engage in conduct constituting an offense by knowingly making false representations designed to induce the belief that such conduct is not prohibited, or if he employs methods of persuasion which create a substantial risk that an offense will be committed by a person who would not otherwise be predisposed to commit it. This defense is not available when the offense involves bodily injury or the threat of bodily injury to a person other than the officer perpetrating the entrapment.

3.4.224 Justification

Justification is a defense when the person's conduct is reasonable, and in fulfillment of his duties as a Tribal officer or employee, or is reasonable discipline of a minor by a parent, guardian, teacher, or other person in the position of parent.

3.4.226 Accountability for Another

A person is legally accountable for the conduct of another when:

A. He has a mental state described by the Chapter provision defining the offense and causes another to perform the conduct, regardless of the legal capacity or mental state of the other person;

B. The Chapter provision defining the offense makes the person accountable; or

C. Either before or during the commission of an offense, with the purpose to promote or facilitate such commission, the person solicits aids, abets, agrees, or attempts to aid such other person in the planning and commission of the offense; however, a person is not accountable if:

1. The person is a victim of the offense committed; or
2. Before the commission of the crime the person terminates his efforts to promote or facilitate the commission of the crime and takes steps to negate the effect or otherwise prevent the commission of the offense.

3.4.228 Liability for Acts of Corporations or Unincorporated Associations

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

3.4.230 Use of Force

A. SELF DEFENSE. A person is justified in the use of force or threat to use force against another when and to the extent that the person reasonably believes that such conduct is necessary to:

1. Defend himself or another against the offender's imminent use of unlawful force;
2. Prevent or terminate such other's unlawful entry into or attack upon an occupied structure; or
3. Prevent or terminate the offender's trespass on, or other tortious or criminal interference with either real or personal property lawfully in the person's possession, or which the person has a legal duty to

protect, or in the possession of another who is a family or household member.

B. A person is justified in the use of force likely to cause death or serious bodily harm only if the person reasonably believes such force is necessary to prevent imminent death or serious bodily harm to himself or another person.

3.4.232 Use of Force by Aggressor

Self-defense is not available under the following circumstances:

A. A person attempts to commit, commits, or escapes after committing an offense; or

B. A person knowingly or intentionally provokes the use of force against himself, unless:

1. Such force is so great that the person reasonably believes that there is an imminent danger of death or serious bodily harm and the person has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant; or
2. In good faith, the person withdraws from physical contact with the assailant and clearly indicates to the assailant the desire to withdraw and terminate the use of force but the assailant continues or resumes the use of force.

3.4.234 Use of Force in an Arrest

A person is justified in using force, except deadly force, which the person reasonably believes to be necessary to affect an arrest or to defend himself or another from bodily harm while making an arrest.

3.4.236 Use of Deadly Force

The use of deadly force is justified under the following circumstances:

A. A law enforcement officer affecting an arrest or preventing an escape from custody following an arrest reasonably believes both that:

1. Such force is necessary to prevent the arrest from being defeated by resistance or escape; and
2. The person to be arrested is attempting to escape by use of a deadly weapon; or

B. A law enforcement officer in performing a legal duty or the execution of legal process reasonably believes the use of force is necessary to protect himself or others from imminent danger to life.

3.4.238 Resisting Arrest

A person is not authorized to use force to resist an arrest which the person knows or reasonably should know is being made by a law enforcement officer or by a private person summoned and directed by a law enforcement officer to make the arrest, even if the person believes the arrest is unlawful and the arrest is, in fact, unlawful.

PART 3 CRIMINAL PROCEDURES

3.4.300 PRELIMINARY PROVISIONS

3.4.301 Prosecution of Offenses

A. No person shall be punished for an offense except upon a legal conviction, including a plea or admission of guilt or *nolo contendere* in open court, by a court of competent jurisdiction, provided, however, that no incarceration or other disposition of one accused of an offense prior to trial in accordance with this Chapter shall be deemed punishment.

B. All criminal proceedings shall be prosecuted in the name of the Pyramid Lake Paiute Tribe as Plaintiff, against the person charged with an offense, referred to as the Defendant.

3.4.302 Rights of the Defendant

In all criminal proceedings, the Defendant shall have the following rights:

1. To appear and defend in person or by counsel except:
 - a. Trial of traffic or hunting and fishing offenses not resulting in injury to any person, nor committed while using alcohol or non-prescription drugs may be prosecuted without the presence of the Defendant upon a showing that the Defendant received actual notice five days prior to the proceeding, if no imprisonment is ordered;
 - b. The Defendant may represent himself or be represented by any attorney or advocate admitted to practice before the Court, but no defendant shall have the right to appointed professional counsel provided at the Tribe's expense; however, the privilege to have counsel appointed may be granted by the Court or any Tribal law as may be provided in the Rules of the Court relating to attorneys and lay advocates.
2. To be informed of the nature of the charges against him and to have a written copy thereof;
3. To testify in his own behalf, or to refuse to testify regarding the charge against him, provided, however, that once a defendant takes the stand to testify on any matter relevant to the immediate proceeding against him, he shall be deemed to have waived all right to refuse to testify in that immediate criminal proceeding. He shall not be deemed to have waived his right to remain silent in other distinct phases of the criminal trial process; or to confront and cross-examine all witnesses against him, subject to the Federal Rules of Evidence;
4. To confront and cross-examine all witnesses against him, subject to the Federal Rules of Evidence;
5. To compel by subpoena the attendance of witnesses in his own behalf;
6. To have a speedy public trial by an impartial judge or jury as provided in this Chapter;
7. To appeal in all cases;

8. To prevent his present or former spouse from testifying against him concerning any matter which occurred during such marriage, except:

a. In any case in which the offense charged is alleged to have been committed against the spouse or the immediate family or the children of either spouse or the defendant, or against the marital relationship;

b. Any testimony by the spouse in the defendant's behalf will be deemed a waiver of this privilege;

9. Not to be twice put in jeopardy by the Tribe for the same offense.

3.4.303 Limitation of Prosecution

A. Every criminal proceeding shall be commenced within three (3) years of the date of commission and diligent discovery of the offense, or prosecution for that offense shall be forever barred.

B. If an offense is committed by actions occurring on two (2) or more separate days, the offense will be deemed to have been committed on the day the final act causing the offense to be complete occurred.

C. The date of "diligent discovery" is the date at which, in the exercise of reasonable diligence, some person other than the defendant and his co-conspirator(s) know or should have known that an offense had been committed.

D. Time spent outside the jurisdiction of the Tribe for the purpose of avoiding prosecution shall not be counted toward the limitation period to begin prosecution.

3.4.304 No Common Law Offenses

No act or failure to act shall be subject to criminal prosecution unless made an offense by some statute of the Tribe.

3.4.305 PROCEEDINGS BEFORE TRIAL

3.4.306 The Complaint

A. COMPLAINT. Every criminal proceeding shall be commenced by the filing of a criminal complaint. The Complaint is a sworn written statement of the essential facts charging that a named individual(s) has committed a particular offense under this Code.

B. CONTENTS OF THE COMPLAINT. The Complaint shall contain the following information:

1. Name and address of the Court;
2. Name of the Defendant(s) and his identity as an Indian;
3. Signature of the Prosecutor and his typewritten name;

4. Written statement describing in ordinary and plain language the facts of the offense alleged to have been committed, including a reference to the time, date and place, as nearly as may be known. The offense may be alleged in the language of the statute violated.
5. Name of the person against whom or against whose property the offense was committed, if applicable;
6. The general name and Tribal Code title and section number of the alleged offense.

C. ERROR. No minor omission from or error in the form of the complaint shall be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown to result from the error.

D. TIME OF FILING COMPLAINT. A Complaint may be filed at any time within the period prescribed by §3.4.116 of this Chapter, provided that, if an accused has been arrested without a warrant the Complaint shall be filed promptly and in no case later than the time of arraignment.

3.4.307 Arrest Warrant or Summons to Appear

A. If it appears from the complaint that an offense has been charged against the defendant, a Judge of the Court shall issue a summons to the Defendant to bring him before the Court. An arrest warrant shall be issued only upon a complaint charging an offense by the Defendant against the law of the Tribe supported by the recorded *ex parte* testimony or affidavit of some person having knowledge of the facts of the case through which the Judge can determine that probable cause exists to believe that an offense has been committed and that the defendant committed it.

B. ISSUANCE OF ARREST WARRANTS OF SUMMONS. Unless the Judge has reasonable grounds to believe that the person will not appear on a summons, a summons shall be issued instead of an arrest warrant.

C. CONTENTS OF ARREST WARRANTS. The warrant of arrest shall be signed by the Judge issuing it, and shall contain the name and address of the Court, the name of the Defendant, any name by which the Defendant is known, the Defendant's description and a description of the offense charged, with a reference to the section of this Code alleged to have been violated. It shall order and command that the Defendant be arrested and brought before a judge of the Court for arraignment. When two (2) or more charges are made against the same person, only one (1) warrant shall be necessary to commit him to trial.

D. CONTENTS OF SUMMONS. A criminal summons shall contain the same information as an arrest warrant except that instead of commanding the arrest of the accused, it shall order the Defendant to appear before a Judge within five (5) days or on a date established by the Court to enter a plea to the charge, and a notice that upon the Defendant's failure to appear, an arrest warrant shall issue and that the Defendant may be further charged with disobeying a lawful order of the Court. If the Defendant fails to appear in response to a summons or refuses to accept the summons, an arrest warrant shall be issued.

E. SERVICE OF ARREST WARRANT AND SUMMONS.

1. A warrant for arrest or a criminal summons may be served by any Tribal or Federal law enforcement officer or any adult person authorized in writing by the Judge. Service may be made at any place within the jurisdiction of the Tribe.
2. The date, time and place of service or arrest shall be written on the warrant or summons, along with the signature of the person serving it, and the warrant or summons shall be returned to the Court. A copy so signed shall be given to the person served or arrested at the time of the arrest, if reasonably possible, or as soon thereafter as is possible.
3. An officer need not have the warrant in his possession at the time of arrest, but if he does not, he shall inform the Defendant of the charge, that a warrant of arrest has been issued and shall provide the Defendant a copy of the warrant not later than the time of arraignment.

3.4.308 Criminal Citations

A. Whenever a law enforcement officer would be empowered to make an arrest without a warrant but has reasonable grounds to believe an immediate arrest is not necessary to preserve the public peace and safety, he may, in his discretion, issue the Defendant a citation instead of taking the person into custody. The citation, signed by the law enforcement officer, shall be considered a criminal complaint, and may be filed in the action in lieu of a formal complaint, unless the Court orders that a formal complaint be filed.

B. Contents of Citation.

1. The citation shall contain the name and address of the Court, the name or alias and description of the Defendant, a description of the offense charged, and the signature of the law enforcement officer who issued the citation.
2. The citation shall contain an agreement by the Defendant to appear before the Judge on a date established by the Court to answer to the charge, and the signature of the Defendant.
3. The citation shall contain a notice that upon Defendant's failure to appear, an arrest warrant shall be issued and that the Defendant may be further charged with disobeying a lawful order of the Court.
4. One (1) copy of the citation shall be given to the Defendant and one (1) copy shall be given to the Prosecutor; the Court will retain the original.

3.4.309 Arraignment and Initial Appearance

A. All persons arrested for violations of this Code shall be brought before the Court as soon as feasible but in no case later than forty-eight (48) hours of the arrest or at the next Court session, whichever is later. All persons cited or given a summons for violations of this Code shall appear before the Court for arraignment as soon as possible, not necessarily within forty-eight (48) hours. Persons appearing before the Court will be read the complaint and the

applicable provisions of this Code. They will be given notice of their rights before being asked to enter a plea.

B. INITIAL APPEARANCE. All persons in custody for a period of time that exceeds forty-eight (48) hours shall be brought before the Court at the next available court date for a bail hearing which shall be determined in accordance with §3.4.345.

C. PROCEDURE AT ARRAIGNMENT. Arraignments shall be conducted in the following order:

1. The Judge shall advise the Defendant of his rights, shall read the entire complaint and deliver a copy of both to the Defendant and state the minimum and maximum authorized penalties.
2. The Judge should determine that the accused understands the charges against him and explain to the Defendant that he has the following rights:
 - a. The right to remain silent;
 - b. To be tried by a jury upon request
 - c. To consult with an attorney at his own expense and that if he desires to consult with an attorney the arraignment will be postponed.
3. The Judge shall ask the Defendant if he wishes to obtain private counsel or use a Court-appointed advocate, if one is available. If the Defendant is allowed time to obtain or consult with counsel, he shall not be required to enter a plea until the date set for his appearance.
4. The Judge shall then ask the Defendant whether or not he wishes to plead "guilty," "nolo contendere" or "not guilty."

D. RECEIPT OF PLEA AT ARRAIGNMENT. The Defendant shall plead "guilty," "nolo contendere" or "not guilty" to the offense charged.

1. If the Defendant refuses to plead, the Judge shall enter a plea of "not guilty" for him.
2. If the Defendant pleads "not guilty," the Judge shall set a trial date and conditions for bail prior to trial.

3.4.310 Commitments

No person shall be detained or jailed for a period longer than forty-eight (48) hours, Saturdays, Sundays, and legal holidays excluded unless an order or commitment bearing the signature of a Judge has been issued.

A. A temporary commitment shall be issued pending investigation of charges or trial.

B. A final commitment shall be issued for those persons incarcerated as a result of a judgment and sentence of the Court.

3.4.311 Joinder

A. JOINDER OF OFFENSES. Two (2) or more offenses may be charged in one (1) complaint long as they are set out in separate counts and they:

1. Are part of a common scheme or plan; or
2. Arose out of the same transaction.

B. JOINDER OF DEFENDANTS. Two (2) or more defendants may be joined in one (1) complaint if they are alleged to have participated in a common act, scheme, or plan to commit one (1) or more offenses. Each defendant need not be charged in each count.

3.4.312 Pleas

A. A Defendant may plead "guilty," *nolo contendere* or "not guilty." The Court shall not accept a plea of "guilty" or *nolo contendere* without first addressing the Defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If the Defendant refuses to plead or if the Court refuses to accept a plea of "guilty" or *nolo contendere*," the Court shall enter a plea of "not guilty." The Court shall not enter a judgment upon a plea of "guilty" or *nolo contendere* unless it is satisfied that there is a factual basis for the plea. If the plea of "guilty" is accepted, the Judge may immediately sentence the defendant or order a sentencing hearing.

B. The Defendant, with the consent of the Court and of the Prosecutor, may plead "not guilty" to any lesser offense than that charged which is included in the offense charged in the Complaint or to any lesser degree of the offense charged.

3.4.313 Withdrawing Guilty Plea

A motion to withdraw a plea of guilty may be made only before a sentence is imposed, deferred, or suspended, except that the Court may allow a guilty plea to be withdrawn to correct a manifest injustice.

3.4.314 Plea Bargaining

Whenever the Defendant pleads "guilty" as a result of a plea arrangement with the Prosecutor, the full terms of such agreement shall be disclosed to the Judge. The Judge, at his discretion, is not required to honor such agreement. In the event that the Judge decides not to honor such agreement, he should offer the Defendant an opportunity to withdraw his plea and proceed to trial.

3.4.315 Pleading and Motions before Trial: Defenses and Objections

A. Pleadings in criminal proceedings shall consist of the complaint or citation and the plea of "guilty," *nolo contendere* or "not guilty." All other pleas and motions shall be made in accordance with this Section.

B. Motions raising defenses and objections may be made as follows:

1. Any defenses or objections which are capable of determination other than at trial may be raised before trial by motion;
2. Defenses and objections based on defects in the institution of the prosecution of the complaint other than that it fails to show jurisdiction in

the Court or fails to charge an offense may be raised on motion only before trial or such shall be deemed waived, unless the Court for good cause shown, grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as a defense or noticed by the Court on its own motion at any stage of the proceeding.

3. Such motions shall be made in writing and filed with the Court at least five (5) days before the day set for trial. Such motions will be argued before the Court on the date of trial unless the Court directs otherwise. Decision on such motions shall be made by the Judge and not by the jury.
4. If a motion is decided against the Defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of the Defendant, the Judge shall alter the proceedings and enter judgment as is appropriate in light of the decision.

3.4.316 Concurrent Trial of Defendants or Charges

A. The Court may order two (2) or more defendants tried together if they could have been joined in a single complaint, or may order a single defendant tried on more than one (1) complaint at a single trial.

B. If it appears that the Defendant or the Tribe are prejudiced by a joinder of offenses or other defendants for trial, the Court may order separate complaints and may order separate trials or provide such other relief as justice requires. In ruling on a motion for severance, the Court may order the Tribe to deliver to the Court for inspection in chambers, any statements made by the Defendant which the Tribe intends to introduce in evidence at trial.

3.4.317 Discovery and Inspection

The Police or Prosecutor shall upon request, permit the Defendant or his attorney to inspect and copy any statements or confessions, or copies thereof, made by the Defendant if such are within the possession or control of, or reasonably obtainable, by the police or prosecution. The police and prosecution shall similarly make available copies of reports of physical, mental or scientific test or examinations relating to or done on the Defendant.

The Defendant or his attorney and the Prosecutor shall reveal by written notice to each other and to the Court at least five (5) working days before trial, the names and addresses of any witnesses upon whom each party intends to rely. Failure to provide such notice will prevent the use of such witnesses by the parties unless it can be shown by the defense that prior notice was impossible or that no prejudice to the to the other party has resulted, in which case the Judge may order the trial delayed or make such other orders as necessary to assure a just determination of the case.

3.4.318 Subpoena

A. The Defendant and Prosecutor shall have the right to subpoena any witnesses they deem necessary for the presentation of their case. Subpoenas in criminal cases shall be issued, served and returned as in civil cases.

B. A subpoena may be served at any place within the jurisdiction of the Court, and as provided for service in civil cases.

C. Failure to obey a properly served subpoena without an adequate excuse may be deemed a contempt of Court, and prosecution thereof may proceed upon the order of the Court. No contempt shall be prosecuted unless a return of service of the subpoena has been made on which is endorsed the date, time and place of service and the name and signature of the person performing such service.

3.4.319 TRIAL

3.4.320 Trial by Jury or Bench Trial

A. All trials of offenses subject to imprisonment shall be by the Court unless the Defendant files a request for a jury trial and a jury fee of One-Hundred Dollars (\$100.00) not less than ten (10) working days prior to the date set for trial. The Judge may in his discretion, waive the jury fee if the Defendant shows that he is without sufficient funds to pay the jury fee.

B. Juries shall be composed of six (6) Tribal members with one (1) alternate if an alternate juror is deemed advisable by the Court.

C. In a case tried without a jury, the Judge shall make a general finding of guilty or not guilty and shall, upon request of any party, make specific findings which may be embodied in a written decision.

D. Juries shall not be used for trials for offenses subject only to fines.

3.4.321 Jurors

A. Jurors shall be drawn from the certified List of Eligible Voters of the Pyramid Lake Paiute Tribe, prepared as provided in the Civil Procedures Chapter of this Code. A person who fails to respond to a subpoena to serve as a juror is subject to a fine not to exceed \$50.00.

B. The Court shall permit the Defendant or his counsel and the Tribal Prosecutor to examine the jurors and the Court itself may also make such an examination.

C. Challenges regarding jury members may be taken as follows:

1. Each side shall be entitled to three (3) peremptory challenges.
2. Either side may challenge any juror for cause.
3. An alternate juror shall be treated as a regular juror for purposes of challenges.

D. The alternate juror shall be dismissed prior to the jury's retiring to deliberate if he has not first been called to replace an original juror who has become, for any reason, unable or disqualified to serve.

E. Jurors shall otherwise be subject to all rules applicable to juries in civil cases.

3.4.322 Order of Trial

A. The Court shall call the case name and number and ask the parties if they are ready to proceed. If the parties are not ready, the Court at its discretion may continue the case or direct the case to proceed.

B. If the parties are ready to proceed, and if the case is to be tried by jury, the Judge should require all prospective jurors to swear to decide the case in a fair and impartial manner if selected for jury duty.

C. If the case is to a jury, the Court should select a potential jury panel at random and question them to determine if they have any interest in the case.

D. When the Court is satisfied that no juror should be dismissed for statutory cause, the prosecution and then the Defendant shall be allowed to question the prospective jurors. The Court may delay any examination it wishes to make until after the parties have examined the jury panel.

E. If it appears that a prospective juror is related to a party in the case or is biased for or against a party, or if the outcome would significantly affect the property, family, or other important interest of the prospective juror, the Court shall dismiss him for cause and select another person for the jury panel.

F. Both the Prosecutor and the Defendant may request the Court to dismiss any juror by peremptory challenge. Each party shall have three (3) peremptory challenges which the Court may not refuse to grant. No reasons need be given for the challenges and alternate jurors shall be examined and selected as the original panel was selected. The final jury will then be sworn.

G. The Court shall request the Prosecutor to read the criminal complaint and to make his opening statement. Prior to reading the complaint, the Court shall explain to the jury that the complaint is not evidence, but is being read for the sole purpose of informing the Defendant and the jury of the offense with which the Defendant is being charged. The Court shall also inform the jury that the statements of counsel are not evidence but are presented so that the jury will have an opportunity to hear what counsel for each party expects the evidence to show.

H. The Prosecutor shall then read the complaint and briefly present the facts which he intends to prove to show the commission of the offense. No argument of the facts or law shall be allowed at this stage. In reading the complaint, no reference to any recommendation to a particular sentence may be made prior to the verdict of "guilty" or "not guilty."

I. The defense may then make an opening statement or may reserve its opening statement until the beginning of the presentation of the defense evidence.

J. The Prosecutor shall then present his evidence followed by the Defendant's presentation of his defense evidence. After the Defendant has presented his evidence, the Prosecutor may present evidence in rebuttal.

K. The Prosecutor shall then present his closing argument, the Defendant his closing argument and the Prosecutor shall be allowed to present a rebuttal.

L. If trial is to a jury, the Judge shall give the jury panel his instructions and the panel shall retire to decide its verdict. If trial is to the Judge, he shall then make his decision or announce the time at which he will present his decision.

M. If the verdict is "not guilty," the Defendant shall be discharged and bail exonerated.

N. If the verdict is "guilty," the Judge may impose sentence immediately or may hold a sentencing hearing at a later time or date to decide on an appropriate sentence.

O. After sentencing, if an appeal is filed, the Judge may hold a hearing to determine an appropriate appeal bond, if any.

3.4.323 Disability of the Judge

A. If by reason of death, sickness, or other disability, the Judge before whom the jury trial has commenced is unable to proceed with the trial, any other Tribal Judge may, upon certifying that he has familiarized himself with the record of the trial, proceed with the trial.

B. If by reason of death, sickness or other disability, the Judge before whom the Defendant has been tried is unable to perform the required duties of a Judge after the verdict or finding of guilt, any other Tribal Judge may perform those duties unless such Judge feels that he cannot fairly perform those duties in which case a new trial may be granted. A new trial shall not be granted if all that remains to be done is the sentencing of the Defendant.

3.4.324 Evidence

The admissibility of evidence and the competence and privileges of witnesses shall be governed by the Federal Rules of Evidence, except as otherwise provided herein.

3.4.325 Expert Witness and Interpreters

A. Either party may call expert witnesses of its own selection and each shall bear its own costs.

B. The Court may appoint an interpreter of its own selection and each party may provide its own interpreters. An interpreter through whom testimony is received from the Defendant or witness or communicated to a Defendant or other witness shall be put under oath to faithfully and accurately translate and communicate as required by the Court.

C. The Judge or Clerk of the Court may act as an interpreter only with the consent of all parties.

3.4.326 Motion for Judgment of Acquittal

A. Upon motion from the Defendant or on its own motion, the Court shall order the entry of a judgment of acquittal of one (1) or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as a matter of law to sustain a conviction of such offenses. A motion for acquittal by the Defendant does not affect his right to present evidence.

B. If a motion for judgment of acquittal is made at the close of presentation of all of the evidence, the Court may reserve decision on the motion, submit the case to the jury

and decide the motion at any time either before or after the jury returns its verdict or is discharged.

3.4.327 Instructions

At the close of evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the request. At the same time, copies of such requests shall be provided to adverse parties. The Court shall inform counsel of its proposed action upon the requests prior to the arguments of counsel to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of the objection. Opportunity shall be given out of the hearing and out of the presence of the jury.

3.4.328 Verdict

The verdict of a jury in a criminal case shall bring a verdict of guilty or not guilty as to each offense charged. The Judge shall render judgment in accordance with the verdict and existing law. If the jury is unable to reach a unanimous verdict, the verdict may be rendered by a two-thirds (2/3) majority vote.

If there are multiple defendants or charges the jury may, at any time, return its verdict as to any defendants or charges to which it has agreed and continue to deliberate on the others.

If the evidence is found to support such verdict, the Defendant may be found guilty of a lesser included offense or attempt to commit the crime charged or a lesser offense without having been formally charged with the lesser included offense or attempt.

Upon the motion of either party, after the return of the verdict, the jury may be polled. If upon the poll of the jury, there is not a majority concurrence, the jury shall be directed to retire for further deliberations or may be discharged.

After the return of the verdict, the Judge at his discretion may request the jury to recommend the punishment to be imposed after a hearing at which both parties have the opportunity to present evidence in mitigation or aggravation of the sentence. The jury's recommendation in such cases shall not be binding on the Judge.

3.4.329 JUDGMENT AND SENTENCE

3.4.330 Judgment

A judgment of conviction shall set forth in writing the charge, plea, verdict or findings and the sentence imposed. If the Defendant is found not guilty or is otherwise entitled to be released, judgment shall be entered accordingly. The judgment shall be signed by the Judge and entered by the Clerk of the Court.

3.4.331 Sentence

Sentence shall be set forth as follows:

A. Sentence shall be imposed without unreasonable delay in accordance with the provisions of the criminal statute or ordinance violated, and this Code. Pending sentence, the Court may commit the Defendant to jail or continue or alter the bail. Before imposing sentence, the Court shall allow counsel an opportunity to speak on behalf of the Defendant and shall address the Defendant personally and ask him if he wishes to make a statement on his own behalf and to present any information in mitigation of punishment. Before imposing sentence, the Court shall also allow any victims of the crime with which Defendant has been convicted to make a statement to the Court of the impact the crime has had on their lives.

B. After imposing sentence, the Court shall inform the Defendant of his right to appeal and Defendant's need to file a notice of appeal with the Court. At any time after a notice of appeal is filed, the Court may entertain a motion to set bail pending appeal.

C. Time served in jail prior to the judgment and sentence while waiting or during trial may be allowed toward any sentence of incarceration imposed.

3.4.332 General Sentencing Provisions

STATEMENT OF POLICY. The sentencing policy of the Tribe in criminal cases is to strive toward restitution and reconciliation of the offender, the victim and the Tribe. While one goal of sentencing is to impress upon the wrongdoer the wrong he has committed, the paramount goal is to restore the victim and Tribe to the position that existed prior to the commitment of the offense, and to restore the offender to harmony with them and the community by requiring him to right his wrongdoing. The provisions of this Section shall govern sentencing for criminal offenses, with consideration of the above goals in mind.

A. Unless the Court determines that the ends of justice will not be served thereby, or that a civil action will more adequately adjudicate damages in the specific case at hand, then in addition to any sentence otherwise provided by law, the Court shall to order the offender to pay restitution to:

1. The victim in money, property, or services; and/or
2. The Tribe in money, property or services.

B. In effectuating Tribal sentencing policy, if the offender recognizes the wrong he has committed and earnestly repents of such wrong, the Court, paying particular attention to prior offenses, in its discretion may:

1. Allow such offender to exchange actual work performed for the Tribe in lieu of a fine or incarceration at the rate calculated on minimum wage to pay off the fine;
2. Place the offender on probation under such reasonable conditions as the Court may direct for a period of time not exceeding three (3) times the amount of the maximum sentence allowed; or
3. Defer entering the judgment and imposing sentence for a period not exceeding four (4) times the maximum sentence allowed on condition that if the offender violates no law and satisfies such other reasonable conditions such as restitution as may be imposed, the plea or verdict of "guilty" will be withdrawn and the charges will be dismissed.

3.4.333 New Trial

A. The Court on motion of a Defendant may grant a new trial to him, if required in the interests of justice. If trial was by the Court without a jury, the Court may vacate the judgment if requested by the Defendant by motion for a new trial and take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly-discovered evidence may be made only within one (1) month after final judgment, but if an appeal is pending, the Court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within seven (7) days after the verdict or finding of "guilty" or within such further time as the Court may establish during the seven (7) day period.

B. The Court, on motion of a Defendant shall dismiss the action if the complaint does not charge an offense or if the Court was without jurisdiction over the offense charged. The motion for arrest of judgment shall be made within seven (7) days after the verdict or finding of "guilty" or a plea of "guilty," or within such further time as the Court may establish during the seven (7) day period.

3.4.334 Correction or Reduction of Sentence

The Court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within thirty (30) days after the sentence is imposed. The Court may also reduce a sentence upon revocation of probation.

3.4.335 Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the Court at any time and after such notice, if any, as the court orders.

3.4.336 APPEAL

3.4.337 Right of Appeal; How Taken

- A. The Defendant has the right to appeal from the following:
 - 1. A final judgment of conviction and the sentence imposed thereon;
 - 2. An order made, after judgment and sentences, affecting his substantial rights.

- B. The Tribe has the right to appeal from the following:
 - 1. A judgment of dismissal, upon a motion to dismiss based on any procedural irregularity occurring before trial, or an order excluding evidence in favor of the Defendant prior to trial;
 - 2. An order arresting judgment or acquitting the Defendant contrary to the verdict of the jury or before such verdict can be rendered;
 - 3. An order of the Court directing the jury to find for the Defendant;
 - 4. An order of the Court made after judgment and sentence affecting the substantial rights of the Tribe.

C. A notice of appeal must be filed within thirty (30) days of the entry of the final judgment and sentence or other appealable final order and it must be served on all parties except the party filing the appeal.

D. Such appeals shall be made in accordance with the Appellate procedure.

3.4.338 Stay of Judgment and Relief Pending Review

A. A sentence of imprisonment may be stayed if an appeal is taken and the Defendant may be given the opportunity to make bail. Any Defendant not making bail or otherwise obtaining release pending appeal shall have all time spent in incarceration counted towards his sentence in the matter under appeal.

B. A sentence to pay a fine or a fine and costs may be stayed pending appeal upon motion of the Defendant, but the Court may require the Defendant to pay such money subject to return if the appeal should favor the Defendant and negate the requirement of paying such.

3.4.339 OTHER PROVISIONS

3.4.340 Search and Seizure

A. SEARCH WARRANTS. A search warrant is an order directed to any Tribal or Federal law enforcement officer directing him to search a particular place for described persons or property and, if found, to seize the persons and/or property.

B. A warrant shall be issued only on an affidavit or affidavits sworn to before a Judge which establishes grounds for issuing the warrant. If the Judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based on hearsay evidence either in whole or in part. Before ruling on a request for a warrant, the Judge may require the affiant to appear personally and be examined by the Judge under oath.

C. CONTENTS OF SEARCH WARRANT. Every search warrant shall contain the name and address of the Court and the signature of the Judge issuing the warrant. It shall specifically describe the place to be searched and the items to be searched for and seized. The warrant shall be directed to any Tribal or Federal law enforcement officer and shall command such person or persons to search, within a specified period of time not to exceed ten (10) days, the person or place named with specificity and contain the date on which it was issued.

D. SERVICE OF SEARCH WARRANTS. Search warrants shall be served by any Tribal or Federal law enforcement officer at any time. A copy of the warrant shall be left with the owner of the place searched if present during said search. If the place to be searched is not occupied at the time of the search, a copy of the warrant shall be left in a conspicuous place on the premises. The officer may break open any outer or inner door or window of a place to be searched, or any part of any place to be searched, or anything thereon to execute a search warrant, if, after proper notice of his authority and purpose, he is denied or refused admittance or if necessary to free himself or a person aiding in the execution of the warrant or if the premises are unoccupied at the time of the search.

E. INVENTORY. The officer serving a search warrant shall make a signed inventory of all property seized and attach such inventory to the warrant. A copy of the inventory and search warrant shall be left with the owner if present during the search, or left in a conspicuous place if an occupant is not present during the search.

F. RETURN OF SEARCH WARRANTS.

1. The officer shall endorse on the warrant the date, time and place of service and shall sign the warrant.
2. The warrant shall be returned to the Court with an inventory of property seized within twenty-four (24) hours of service, Saturday, Sunday and legal holidays excluded.
3. In every case, the warrant shall be returned within ten (10) days of issuance or the next business day after a Saturday, Sunday or legal holiday.

G. PROPERTY SUBJECT TO SEIZURE. Property subject to seizure is property that provides probable cause to believe that such property is:

1. Stolen, embezzled, contraband or otherwise criminally possessed;
2. Which is or has been used to commit a criminal offense; or
3. Property that constitutes evidence of the commission of a criminal offense.

H. WARRANTLESS SEARCHES. A law enforcement officer may conduct a search without a warrant only:

1. Incident to a lawful arrest; or
2. With the consent of the person to be searched; or
3. With the consent of the person having actual possession and control of the property to be searched; or
4. When he has reasonable grounds to believe that the person searched may be armed and dangerous; or
5. When the search is of a vehicle capable of being moved and the officer has reason to believe that it contains property subject to seizure, or upon inventory of such vehicle after impoundment and seizure; or
6. In any other circumstances wherein Federal law has held that a search without obtaining a warrant prior to the search would not be unreasonable; and
7. Based on conditions of parole/probation, or existing court order authorizing search and seizure.

I. A person aggrieved by an unlawful search and seizure may move the Tribal Court for return of the property, not contraband, on the ground that he is entitled to lawful

possession of the property illegally seized. The Judge may receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned if not contraband and shall not be admissible at any hearing or trial.

J. A law enforcement officer may stop any person in a public place whom he has reasonable cause to believe is in the act of committing an offense, or has committed an offense, or is attempting to commit an offense and demand of him his name, address, an explanation of his actions and may, if he has reasonable grounds to believe his own safety or the safety of others nearby is endangered, conduct a Terry-frisk search of such person for weapons.

K. The term "property" used in this Section includes but is not limited to, documents, books, papers, memorandum, and any other tangible property, as well as computer and electronic files and data.

3.4.341 Arrest

A. An arrest is the taking of a person into custody in the manner authorized by law. An arrest may be made by a Police Officer or by a private person.

B. A Police Officer may make an arrest in obedience to an arrest warrant, or he may, without a warrant, arrest a person under the following circumstances:

1. When he has probable cause to believe that an offense has been committed in his presence;
2. When he has probable cause for believing that the person has committed an offense, although not in his presence, and there is reasonable cause for believing that the person may, before a warrant can be obtained:
 - a. Flee the jurisdiction or conceal himself to avoid arrest;
 - b. Destroy or conceal evidence of the commission of an offense; or
 - c. Injure or annoy another person or damage property belonging to another person.

C. A private person may arrest another, for prompt delivery to a law enforcement officer when:

1. An offense is committed or attempted to be committed in his presence; or
2. An arrest warrant for that person is, in fact, outstanding.

D. Any person making an arrest may orally summon as many persons as he deems necessary to help him.

E. Any person, upon making an arrest:

1. Must inform the person to be arrested of his intention to arrest him, of the cause or reasons for the arrest, and his authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to commit an offense, or is pursued immediately after its

commission or attempts an escape if such is not reasonably possible under the circumstances;

2. Must show the warrant of arrest as soon as is practicable, if such exists and is demanded;
3. May use reasonable force and all necessary means to effect the arrest, if he is a law enforcement officer and the person to be arrested either flees or forcibly resists after receiving information of the officer's intent to arrest, except that deadly force may be used only as provided by law;
4. If a law enforcement officer, may break open a door or window of a building in which the person to be arrested is present, or is reasonably believed to be present, after demanding admittance and explaining the purpose for which admittance is desired;
5. May search the person arrested and take from him and put into evidence all weapons he may have about his person;
6. Shall as soon as is reasonably possible, deliver the person arrested to a police station or do as commanded by the arrest warrant or deliver the person arrested to jail for processing of a complaint.

3.4.342 Arrest in Hot Pursuit

Any law enforcement officer otherwise empowered to arrest a person within this jurisdiction may continuously pursue such person from a point of initial contact within the jurisdiction of the Tribe to any point of arrest within or without the jurisdiction of the Tribe and such arrest shall be valid, provided that such officer shall respect and comply with the extradition requirements of the jurisdiction in which the arrest is finally made.

Any law enforcement officer commissioned by the Federal government, any Indian tribe, or State, when in hot and continuous pursuit of any person for the commission of a felony within such other jurisdiction may validly arrest such person within the jurisdiction of the Tribe, provided that any person so arrested shall be forthwith delivered to the Judge for a hearing to show cause pursuant to the extradition laws of the Tribe.

3.4.343 Limitation on Arrests in the Home

A person may be arrested in his own home only by a:

- A. Law enforcement official pursuant to an arrest warrant;
- B. Law enforcement officer for an offense committed in the home in the presence of the officer;
- C. Law enforcement officer in continuous pursuit of a person who flees to his home to avoid arrest; or
- D. Private person when the offense is committed in his presence.

3.4.344 Notification of Rights

- A. Upon arrest, the Defendant shall be notified that he has the following rights:

1. The right to remain silent and that any statements made by him may be used against him in a court of law;
2. That he has the right to obtain an attorney or advocate at his own expense and to have an attorney or advocate present at any questioning;
3. That if he wishes to answer the questions of the police he may stop or request time to speak with his attorney or advocate at any point in the questioning.

B. Prior to conducting a consensual warrantless search pursuant to §3.4.340.H.2 or 3, the Officer shall specifically inform the person to be searched or the person in charge of the property to be searched:

1. That the search will be conducted only with the person's consent;
2. That the person is under no obligation or requirement to consent to the search and may refuse to consent to the search if he chooses to do so, or he may request the advice of an attorney or advocate at his own expense prior to responding to the requested consent search;
3. That if the person refuses to consent to the search, the Officer will not search the person or property without first obtaining a warrant from the Court.

C. Whenever possible, the Officer should obtain a written statement that the person knows these rights, understands and waives them prior to taking a voluntary statement from the Defendant or conducting a warrantless consensual search, provided that the absence of such a written statement does not preclude the admission of the statement or other evidence if the Court determines that the statement or consent to search were voluntary.

3.4.345 Release Prior to Trial and Bail

A. Any person charged with an offense shall at his appearance before a Judge of the Court, be ordered released pending trial on his personal recognizance or upon execution of an unsecured appearance bond in an amount specified by the Judge, subject to the condition that such person shall not attempt to influence, injure, tamper with or retaliate against an officer, juror, witness, informant or victim or violate any other law, unless the Judge determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required.

B. When such determination is made, the Judge shall, either in lieu of or in addition to, release on personal recognizance or execution of an unsecured appearance bond, impose one or any combination of the following conditions of release which will reasonably assure the appearance of the person for trial:

1. Place the person in the custody of a designated person or organization agreeing to supervise him;
2. Place restrictions on the travel, association, or place of residence of the person during the period of release;

3. Place restrictions on alcohol and drug use, subject the person to random drug and alcohol testing;
4. Require the person to report to pre-trial services;
5. Require the execution of an appearance bond in a reasonable amount which is:
 - a. Sufficient to ensure the presence of the Defendant in any pending criminal proceeding;
 - b. Sufficient to assure compliance with the conditions set forth in a bail or release order; and
 - c. Not oppressive.
6. Require the execution of a bail bond with sufficient bail sureties, or the deposit of cash in lieu thereof;
7. Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after a specified hour.

C. In determining which conditions of release will reasonably assure appearance, the Judge shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at other court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

D. A Judge authorizing the release of a person under this Section shall issue an appropriate order containing a statement of the conditions imposed, if any, and shall inform the accused of the penalties applicable to violations of the conditions of his release and shall further advise him that a warrant for his arrest will be issued immediately upon any violation.

E. A person for whom conditions of release are imposed and who, after forty-eight (48) hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the Judge who imposed them. Unless the conditions of release are amended and the person is thereupon released, the Judge shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the Judge who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the Judge shall set forth in writing the reasons for the continued requirement. In the event that the Judge who imposed conditions of release is unavailable, any other Judge of the Court may review such conditions.

F. A Judge ordering the release of a person on any condition specified in this Section may at any time, amend his order to impose additional or different conditions of release provided that, if the imposition of such additional or different conditions result in the detention of the person as a result of his inability to meet such conditions or in the release of

the person on a condition requiring him to return to custody after specified hours, the provisions of Subsection E shall apply.

G. Information stated in, or offered in connection with any order entered pursuant to this Section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

H. Nothing contained in this Section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the Court, nor to prevent the court by rule from authorizing and establishing a Bail Schedule for certain offenses or classes of offenses through which a person arrested may post bail with the Clerk of the Court and obtain his release prior to his appearance before a judge.

I. An enrolled Pyramid Lake Paiute Tribal Member Defendant is eligible for in lieu of posting bail, he or she may have two enrolled Pyramid Lake Paiute Tribal Members vouch for that Defendant. They must sign a promise to pay his or her bail should he or she fail to appear at Court for the duration of the case. All parties must provide valid enrollment cards to the Tribal Court.

I. Bail Schedule

1. The Court Administrator in consultation with the Chief Judge will establish and post a schedule of bail for all classes of offenses in accordance with the provisions of this Code.
2. The Court Administrator in consultation with the Chief Judge will review and if necessary, replace any existing bail schedule with a revised bail schedule by January 31st of each year.
3. All bail schedules shall be approved by the Tribal Council, based on the recommendation of the Law and Order Committee.

3.4.346 Appeal from Conditions of Release

A. A person who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his application pursuant to §3.4.345 by the Judge, may move the Court to amend the order and have such motion determined by a Judge of the Court. This motion shall be determined promptly.

B. In any case in which a person is detained after:

1. The Judge denies a motion, under Subsection A above, to amend an order imposing conditions of release, or
2. Conditions of release have been imposed or amended by the Court; the person may appeal any such final decision.

C. An appeal of any such decision may be taken to the Court of Appeals. Any order so appealed shall be affirmed if it is supported by the proceedings below. If an order is not so supported, the Court of Appeals may remand the case for further hearing, or may, with or without additional evidence, order the person released pursuant to §3.4.346 upon such

conditions as the Court of Appeals determines to be proper. This appeal shall be determined promptly.

3.4.347 Release after Conviction

A person who has been convicted of an offense and is either waiting sentence or has filed an appeal, shall be treated in accordance with the provisions of §3.4.346 unless the Judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained and the provisions of §3.4.346 shall not then apply.

3.4.348 Penalties for Failure to Appear

A. A person who has been released pursuant to this Criminal Code and who willfully fails to appear before the Court as required shall incur a forfeiture of any security which was given or pledged for his release, and in addition, shall:

1. If he was released while awaiting sentence or pending an appeal after any conviction for any offense, be subject to a fine of Five-Hundred Dollars (\$500.00) and imprisonment for a term of six (6) months; or
2. If he was released in connection with a charge other than as described herein, he shall be fined not more than the maximum provided for the offense charged or imprisoned for not more than six (6) months or both; or
3. If he was released for appearance as a material witness, shall be fined not more than Two Hundred Fifty Dollars (\$250.00) or imprisoned for not more than three (3) months or both.

3.4.349 PROBATION

3.4.354 Probation

A. Where a sentence has been imposed upon a Defendant who has not previously been convicted of any offense, the Court may at its discretion, suspend the sentence imposed and allow the Defendant his freedom on probation upon the giving of a pledge of good conduct during the period of the sentence and any other terms and conditions that may be imposed by the Judge or the Probation Officer.

B. Any Defendant who violates his probation pledge or the terms and conditions of probation shall be required to serve the original sentence plus an additional one-half (1/2) of such penalty as penalty for the violation.

3.4.355 Extradition

A. Any Indian found within the exterior Reservation boundaries who is wanted by authorities for a violation of law committed outside the jurisdiction of the applicable court, and when there exists a warrant of arrest issued by outside authorities, then the Indian may be arrested and taken into custody by Tribal or Federal Police for prompt transfer to the appropriate law enforcement agency.

B. The arrest and removal of the person will be accomplished in accordance with the procedures set forth herein.

1. Copies of outside warrants shall be promptly presented to the Judge of the Court for a review as to date, charge and person named thereon, and to determine its apparent validity. The Judge, upon a satisfactory review as to the validity of the warrant, shall issue an order for the arrest of the person named on the warrant.
2. After taking the named person into custody, the police officer shall bring him to the Court where the Judge shall hold a hearing to determine the sole issue of whether or not the person in custody and before the Court is the same person charged on the face of the warrant. The person may waive the removal hearing and will then be promptly turned over to the appropriate outside authority.
3. Where a warrant is issued from the court of another Indian reservation, the warrant will be presented to the Judge of the Court by an officer of the Court that issued the warrant. The same procedures shall apply as for state warrants.
4. A criminal summons issued by any state, county or municipal court, or the court of any Indian tribe, may be served on any person within the exterior Reservation boundaries upon presentation of the summons to the Court. If the Court determines that the summons is valid, the Court shall order that it be served by Tribal law enforcement officers. Such service shall not amount to personal service for purposes of the jurisdiction of the issuing state, county, municipal or tribal court, as the Pyramid Lake Indian Reservation is outside the other jurisdiction, but is a method of substituted service.

3.4.356 FORFEITURES

3.4.357 Scope

Except as otherwise provided in this Criminal Code, the provisions of §3.4.309 to §3.4.389, inclusive, govern the seizure, forfeiture, and disposition of all property and proceeds subject to forfeiture.

3.4.358 Definitions

- A. "Claimant" means any person who claims to have:
1. Any right, title or interest of record in the property or proceeds subject to forfeiture;
 2. Any community property interest in the property or proceeds; or
 3. Had possession of the property or proceeds at the time of the seizure thereof by the plaintiff.
- B. "Plaintiff" means the Pyramid Lake Paiute Tribe, which shall be represented by the Tribe's prosecutor or other designated representative in any forfeiture action.

C. "Property" includes any:

1. Fixture or improvement to real property;
2. Personal property, whether tangible or intangible, or interest in personal property;
3. Conveyance, including any aircraft, vehicle, or vessel;
4. Money, security, or negotiable instrument; and/or
5. Proceeds.

D. "Protected interest" means the enforceable interest of a claimant in property, which interest is shown not to be subject to forfeiture.

E. "Willful blindness" means the intentional disregard of objective facts which would lead a reasonable person to conclude that the property was derived from unlawful activity or would be used for an unlawful purpose.

3.4.359 Forfeiture of Personal Property and Conveyances Used in Commission of a Crime

A. All personal property, including but not limited to, any tool, substance, weapon, machine, computer, money or security, which is used as an instrumentality in any of the following crimes, is subject to forfeiture: The commission of or attempted commission of the crime of kidnapping, assault, aggravated assault, battery, aggravated battery, vehicular battery, robbery, rape, arson, burglary, breaking and entering, larceny, extortion, false pretenses, embezzlement, theft-related offenses, forgery, deceptive business practices, rioting, cruelty to animals (including the subject animals), weapons-related offenses, dangerous devices offense, fireworks-related offenses, hunting and fishing violations, bribery, tampering offenses, injury to public property, liquor violations, narcotics or drug-related violations; alcohol-related offenses, tampering-related offenses, escape, and criminal trespass;

B. Personal property shall not be subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge, consent or willful blindness;

C. A forfeiture of personal property encumbered by a bona-fide security interest is subject to the interest of the secured party if he neither had knowledge of no consented to the crime. If personal property is forfeited the Tribe may pay the existing balance and retain the personal property for official use.

3.4.360 Seizure of Property: Requirement of Process

A. Except as provided in Subsection B., property that is subject to forfeiture located within the jurisdiction of the Pyramid Lake Paiute Tribe may only be seized by a law enforcement agency upon process issued by a Judge of the Pyramid Lake Tribal Court.

B. Seizure of property may be made by a law enforcement agency without process if:

1. The seizure is incident to:
 - a. An arrest;
 - b. A search pursuant to a search warrant; or
 - c. An inspection pursuant to a warrant for an administrative inspection;
2. The property is the subject of a final judgment in a proceeding for forfeiture;
3. The law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
4. The law enforcement agency has probable cause to believe that the property is subject to forfeiture.

3.4.361 Title in Property; Transfer

A. All right, title, and interest in property subject to forfeiture vests in the Plaintiff:

1. In the case of property used or intended for use to facilitate the commission or attempted commission of any crime, when the property is so used or intended for such use.
2. In the case of property otherwise subject to forfeiture, when the event giving rise to the forfeiture occurs.
3. In the case of proceeds, when they become proceeds.

B. Any transfer of property which occurs after title to the property has become vested in the Plaintiff, and before the termination of the proceeding for forfeiture, is void as against the Plaintiff, unless the person to whom the transfer is made is a good faith purchaser for value. If such a transfer is made, the purchaser must, in the proceeding for forfeiture, establish by a preponderance of the evidence that he has:

1. An interest of record in the property;
2. Given fair value for his interest; and
3. Acquired his interest without notice of the proceeding or the facts giving rise to the proceeding.

C. If the purchaser acquires his interest after the seizure of the property by the Plaintiff, it is conclusively presumed that the interest has been acquired with notice of the proceeding.

3.4.362 Proceeding for Forfeiture; Rules of Practice; Complaint; Service of Summons and Complaint; Answer; Parties

A. Except as otherwise provided in §3.4.356 to §3.4.365, the rules governing civil actions in the Court shall be applicable to and constitute the rules of practice in a proceeding for forfeiture pursuant to those sections.

B. A proceeding for forfeiture is commenced by filing a complaint for forfeiture. If the property has been seized without process, the Plaintiff shall promptly file the complaint for forfeiture. The property is subject to an action to claim its delivery only if the Plaintiff does not file the complaint for forfeiture within sixty (60) days after the property is seized. If the complaint for forfeiture is filed following the commencement of an action claiming delivery, the complaint must be treated as a counterclaim.

C. A proceeding for forfeiture is *in rem*. The complaint for forfeiture must be filed in the Court if the property is located within the jurisdiction of the Tribe.

D. The Plaintiff shall cause service of the summons and complaint to be made upon each claimant whose identity is known to Plaintiff or who can be identified through the exercise of reasonable diligence.

E. Each Claimant served with the summons and complaint who desires to contest the forfeiture shall, within twenty (20) days after the service, serve and file his verified answer or other response to the complaint. The Claimant shall admit or deny the averments of the complaint and shall, in short and plain terms, describe the interest he asserts in the property. Concurrently with the answer, the Claimant shall serve answers or objections to any written interrogatories served upon him with the summons and complaint.

F. No person, other than the Plaintiff and any Claimant, is a party in the proceeding.

3.4.363 Proceedings for Forfeiture; Motion to Stay; Standard of Proof; Conviction of Claimant Not Required; Confidentiality of Informants; Return of Property to Claimant

A. The Court shall proceed as soon as practicable to a trial and determination of each forfeiture proceeding, and shall attempt to provide priority to such actions over other civil matters.

B. At a proceeding for forfeiture, the Plaintiff or Claimant may file a motion for an order staying the proceeding and the Court shall grant that motion if a criminal action which is the basis of the proceeding is pending trial. The Court shall, upon a motion made by the Plaintiff, lift the stay upon a satisfactory showing that the Claimant is a fugitive.

C. The Plaintiff in a proceeding for forfeiture must establish proof by clear and convincing evidence that the property is subject to forfeiture.

D. In a proceeding for forfeiture, the rule of law that forfeitures are not favored does not apply.

E. The Plaintiff is not required to plead or prove that such a Claimant has been charged with or convicted of any criminal offense. If proof of such a conviction is made, and it is shown that the judgment of conviction has become final, the proof is, as against any Claimant, conclusive evidence of all facts necessary to sustain the conviction.

F. The Plaintiff has an absolute privilege to refuse to disclose the identity of any person, other than a witness, who has furnished to law enforcement, information purporting to reveal the commission of a crime. The privilege may be claimed by an appropriate representative of the Plaintiff.

G. If the Court determines that the property is not subject to forfeiture, the Court shall order the property and any interest accrued returned to the Claimant found to be entitled to the property. If the Court determines that the property is subject to forfeiture, the Court shall so decree. The property, including any interest accrued, must be forfeited to the Plaintiff, subject to the right of any Claimant who establishes a protected interest in the proceeding. Any such Claimant must, upon the sale or retention of the property, be compensated for his interest.

3.4.364 Disposition of Property after Seizure and Forfeiture

A. Except as otherwise provided in Subsection B, after property has been seized the Tribe may:

1. Place the property under seal;
2. Remove the property to a place designated by the Tribe for the storage of that type of property; or
3. Remove the property to an appropriate place for disposition in a manner authorized by the Court.

B. If the Tribe seizes currency, unless otherwise ordered by the Court, the Tribe shall deposit the currency in an interest-bearing account maintained for the purpose of holding currency seized by the Tribe.

C. When the Court declares property to be forfeited, the plaintiff may:

1. Retain it for official use;
2. Sell any of it which is neither required by law to be destroyed nor harmful to the public; and
3. Remove it for disposition in accordance with the applicable provisions of this Law and Order Code.

3.4.365 Distribution of Proceeds from Forfeited Property

A. The proceeds from any sale or retention of property declared to be forfeited and any interest accrued pursuant to §3.4.361.B. must be applied, first, to the satisfaction of any protected interest established by a claimant in the proceeding, then to the proper expenses of the proceeding for forfeiture and resulting sale, including the expense of effecting the seizure, the expense of maintaining custody, the expense of advertising and costs of the suit.

B. Any balance remaining after the distribution required by Subsection A. must be deposited in the Tribe's general account.

PART 4 CRIMES AGAINST PERSONS

3.4.400 Homicide

A. It is unlawful to willfully, intentionally, knowingly, or negligently to cause the death of another human being.

B. Homicide is a Class A offense. If the offense is found to have been committed intentionally, no suspension of sentence or parole is granted, and the maximum fine and imprisonment is imposed.

3.4.402 Assault

A. It is unlawful knowingly or intentionally to cause another to be in fear or apprehension of bodily harm.

B. Assault is a Class A offense.

C. If the victim is less than sixteen (16) years old and the offender is an adult, or the victim is a law enforcement officer, Assault is considered a Class A offense.

3.4.404 Aggravated Assault

A. It is unlawful to knowingly or intentionally cause another to be in fear or apprehension of serious bodily harm by use of a weapon.

B. Aggravated Assault is a Class A offense.

C. If the victim is less than sixteen (16) years old and the offender is an adult, or the victim is a law enforcement officer, Aggravated Assault is considered a Class A offense.

3.4.406 Battery

A. It is unlawful to:

1. Knowingly or intentionally cause bodily harm to another;
2. Negligently cause bodily harm to another with a weapon; or
3. Knowingly or intentionally have physical contact of an insulting or provoking nature with another without his consent.

B. Battery is a Class A offense.

C. If the victim is less than sixteen (16) years old and the offender is an adult, or the victim is a law enforcement officer, Battery is considered a Class A offense.

3.4.408 Aggravated Battery

A. It is unlawful knowingly or intentionally to cause:

1. Serious bodily harm to another;

2. Bodily harm to another with a weapon; or
 3. Bodily harm to a law enforcement officer or a person who is responsible for the care and custody of a prisoner.
- B. Aggravated Battery is a Class A offense.

3.4.410 Sexual Battery

A. It is unlawful to subject another to any sexual contact without the consent of the person.

B. As used in this Section, the term "without consent" means:

1. The victim is compelled to submit by force against them; or,
2. The victim is incapable of consent because they are:
 - a. Mentally defective or incapacitated;
 - b. Physically helpless; or
 - c. Less than sixteen (16) years old.

C. The term "Force" in Subsection B-1 means the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender.

D. Prosecution under this provision may be commenced within five (5) years after the victim reaches the age of eighteen (18) if the victim was under the age of eighteen (18) years at the time the offense occurred.

E. Sexual Battery is a Class A offense.

3.4.412 Vehicular Battery

A. It is unlawful to operate a motor vehicle while under the influence of drugs or alcohol, or both, and cause bodily injury to another.

B. Vehicular Battery is a Class A offense.

3.4.414 Verbal or Written Battery

A. It is unlawful to threaten verbally or in writing to commit any offense involving violence with the apparent ability to do so:

1. With the intent to terrorize another or place such other in fear of imminent serious bodily injury; or
2. To cause evacuation of a building, place of assembly, or transportation or otherwise to cause serious public inconvenience.

- B. Verbal or Written Battery is a Class B offense.

3.4.416 Causing a Suicide

- A. It is unlawful intentionally to cause a suicide by force, duress or deception.
- B. Causing a Suicide is a Class A offense.

3.4.418 Aiding or Soliciting a Suicide

- A. It is unlawful to intentionally aid or solicit another to attempt or commit suicide by advising, encouraging or assisting another to take their own life.
- B. The fact that the suicide was not successful is not a defense.
- C. Aiding or Soliciting a Suicide is a Class A offense.

3.4.420 Kidnapping

- A. It is unlawful to intentionally and knowingly remove another from their place of residence, business, or from the place where he is found or to unlawfully confine or conceal another for a substantial period, with any of the following purposes to:
 - 1. Hold for ransom or reward, or as a shield or hostage;
 - 2. Facilitate commission of any offense or flight thereafter;
 - 3. Inflict bodily injury on or to terrorize the victim or another; or
 - 4. Interfere with the performance of any Tribal governmental or political function.
- B. Removal, restraint or confinement is unlawful within the meaning of this Section if it is accomplished by force, threat or deception.
- C. Kidnapping is a Class A offense.

3.4.422 False Imprisonment

- A. It is unlawful to intentionally or knowingly restrain or imprison another so as to interfere with their liberty without lawful authority by:
 - 1. Secreting or holding another in a place of isolation; or
 - 2. Using or threatening to use physical force against any person.
- B. False Imprisonment is a Class A offense.

3.4.424 Robbery

- A. It is unlawful to take anything of value from another person or from the immediate control of another person by:

1. Inflicting bodily harm upon another;
2. Threatening to inflict bodily harm upon any person;
3. Intentionally or knowingly placing any person in fear of immediate bodily harm; or
4. Committing or threatening to commit any Class A offense other than theft.

B. Any acts which occur in an attempt to commit theft, in the commission of a theft, or in flight after the commission of or the attempt of commission of theft is included as occurring within the course of the theft.

C. Robbery is a Class A offense.

3.4.426 Rape in the First Degree

A. It is unlawful to intentionally and knowingly:

1. Compel another to submit to sexual intercourse by force or by the threat of imminent death, serious bodily injury, extreme pain, or kidnapping to be inflicted on that person or anyone else; or
2. Engage in sexual intercourse with a person under the age of sixteen (16) years of age, regardless of consent.

B. Rape in the First Degree is a Class A offense.

3.4.428 Rape in the Second Degree

A. It is unlawful intentionally and knowingly to:

1. Compel another to submit to sexual intercourse by any threat that would prevent resistance by a person of ordinary resolution;
2. Engage in sexual intercourse with another whose power to appraise or control their conduct has been substantially impaired by the use of illegal drugs or other intoxicants without their knowledge, and for the purpose of preventing resistance;
3. Engage in sexual intercourse with a person with the knowledge that the person suffers from a mental disease or defect which renders that person incapable of appraising the nature of the conduct; or
4. Engage in sexual intercourse with a person who is unconscious or with a person who is unaware, or with a person who submits because they falsely believe that the person is a spouse.

B. Rape in the Second Degree is a Class A offense.

3.4.430 Indecent Exposure

A. It is unlawful for a person to knowingly and intentionally expose their genitalia to another person with reckless disregard for the offensive, insulting, or frightening effect the act may have on the other person.

B. Indecent Exposure is a Class B offense.

C. If the victim of the indecent exposure is under the age of sixteen (16) years, Indecent Exposure is a Class A offense.

3.4.432 Open or Gross Lewdness

A. It is unlawful to commit any act of open or gross lewdness.

B. The first offense of open and gross lewdness is a Class B offense.

C. The second or subsequent offense of open and gross lewdness is a Class A offense.

D. For purposes of this Section, the breast feeding of a child by the mother of the child does not constitute an act of open or gross lewdness.

3.4.434 Prostitution

A. It is unlawful to knowingly and intentionally engage, agree to engage, or offer to engage in sexual intercourse or sexual acts for any form of compensation, express or implied, whether or not such compensation is presently received or to be received at a later date.

B. It is unlawful to procure, solicit, encourage or induce a person to engage, agree to engage in sexual intercourse or sexual acts for any form of compensation, express or implied, whether or not such compensation is presently received or to be received at a later date.

C. Prostitution is a Class A offense.

3.4.436 Spreading Sexually-Transmitted Disease

A. It is unlawful knowingly or intentionally to infect another person with a sexually-transmitted disease.

B. The Court, upon conviction of an offender, shall have the power to order the medical examination and treatment of the convicted offender and may also order an investigation to determine to what extent others have or may have been infected by the convicted offender.

C. Spreading Sexually-Transmitted Disease is a Class A offense.

3.4.438 Bigamy

A. It is unlawful to:

1. Enter into a marriage with another knowing that the other person is legally married; or
 2. Be knowingly married to more than one person at the same time.
- B. Bigamy is a Class A offense.

3.4.440 Elder and Vulnerable Adult Abuse

It is unlawful to knowingly and intentionally physically or mentally abuse, neglect, or exploit an older person or vulnerable adult.

- A. A first time conviction for Elder and Vulnerable Adult Abuse is a Class B offense.
- B. A second conviction for Elder and Vulnerable Adult Abuse is a Class A offense.
- C. A third or subsequent conviction is a Class A offense.

3.4.442 Failure to Report Elder Abuse

A. It is unlawful to knowingly and intentionally fail to report elder and vulnerable adult abuse to the proper authorities.

B. Failure to Report Elder and Vulnerable Adult Abuse may result in a fine not to exceed Five Hundred Dollars (\$500.00).

3.4.444 Failure to Provide Support or Care for Dependent Persons

A. It is unlawful to fail to provide support or care for dependent persons by knowingly and intentionally:

1. Refusing or neglecting to furnish food, shelter, or proper care, which the person is physically and financially able to provide, to any person recognized as legally dependent upon the person;
2. Endangering the health, welfare, or emotional well-being of any dependent person under the person's care; or
3. Failing to provide financial support which the person is legally obligated to provide and the person is financially able to provide.

B. Failure to Support or Care for Dependent Persons is a Class B offense.

3.4.446 Failure to Send Children to School

A. It is unlawful to fail to send children to school by neglecting or refusing without good cause, to send any child of school age under the person's care to school.

- B. A first time conviction of failure to send children to school is a Class C offense.
- C. A second or subsequent conviction of failure to send children to school is a Class B offense.

D. Each day that a person fails to send children to school is a separate count of failure to send children to school.

3.4.448 Exceptions for Home School or Private School Students

Pursuant to the provisions of the Nevada Revised Statutes §392.070, attendance of a child required by the provisions of §3.6.1502 of this Code must be excused when:

- A. The child is enrolled in a private school pursuant to this Code; or
- B. The parent of a child chooses to provide education to the child and files a Notice of Intent to Home School the child with the school district in which the child resides.

3.4.450 Curfew Violations

A. It is unlawful for any person under the age of eighteen (18) years to be away from their place of residence in public places between the hours of 11:00 p.m. and 6:00 a.m. except if the minor is under the immediate supervision of a parent, guardian or other adult approved by the parent or guardian. A person under the age of eighteen (18) may attend authorized school functions without such supervision. Parents or guardians of minors are responsible to see that the minor abides by the curfew regulations.

B. A person under the age of eighteen (18) years found after the following time periods in a place other than their domicile shall be presumed to be in violation of the specified curfew:

1. Minors Age Fourteen (14) Years and Under. For minors under the age of fourteen (14) years, the following curfew hours are established:
 - a. On weeknights during the school term, except for vacation periods, the curfew shall be between the hours of 8:00 p.m. and 6:00 a.m.
 - b. On weekend nights and during school vacations periods, the curfew hours shall be between the hours of 9:00 p.m. and 6:00 a.m.
2. Minors Fourteen (14) Years and Older. For minors age fourteen (14) and older, the following curfew hours are established:
 - a. On weeknights during the school term, except for vacation periods, the curfew shall be between the hours of 9:00 p.m. and 6:00 a.m.
 - b. On weekend nights and during school vacation periods, the curfew shall be between the hours of 11:00 p.m. and 6:00 a.m.

C. Exception to Curfew Hours. The curfew hours specified in this Section shall not be applicable to those minors who:

1. Are under the supervision of a responsible adult and are accompanied by such adult;
2. Are returning to their domiciles after participating in an activity which ended after the age-specific curfew hour; or

3. Are attending a function sponsored by a religious, educational, cultural, sport or Tribal organization.

D. Penalties for Violations.

1. PENALTY FOR MINOR. Those minors who are found violating the age-specific curfew shall be considered "juvenile offenders" under this Chapter and shall be subject to the jurisdiction of the Juvenile Court for adjudication. In addition, the Court may impose a community service obligation on the minor which is equivalent to not less than Fifty Dollars (\$50.00) and not more than One Hundred Fifty Dollars (\$150.00) for each curfew violation.
2. PENALTY FOR PARENT, GUARDIAN OR CUSTODIAN. Any parent, guardian or custodian who shall negligently or purposefully permit a violation of the curfew hour for a minor under his care shall be liable for a fine of not less than One Hundred Dollars (\$100.00) and not more than Two Hundred Fifty Dollars (\$250.00) and/or a jail term of not more than five (5) days.
3. PENALTY FOR OTHER ADULTS. Any adult who shall assist, aid, abet, counsel or lure a minor to be in violation of this Code shall be subject to a jail term of not more than ten (10) days and a fine of not more than Five Hundred Dollars (\$500.00).

PART 5 CRIMES AGAINST PROPERTY

3.4.500 Arson in the First Degree

A. It shall be unlawful to start a fire knowingly or recklessly, carelessly or negligently, or cause an explosion without regard to the consequences which:

1. Endangers human life or safety, or
2. Damages or destroys the property of another.

B. Arson in the First Degree is a Class A offense.

3.4.502 Arson in the Second Degree

A. It shall be unlawful to start a fire knowingly and intentionally or cause an explosion with the purpose of destroying or damaging any:

1. Building, dwelling, occupied structure of other property of another exceeding One Thousand Dollars (\$1,000.00); or
2. Destroying or damaging any property, by whosoever owned, to collect insurance for such loss.

B. Arson in the Second Degree is a Class B offense.

3.4.504 Criminal Mischief

A. It shall be unlawful to knowingly and intentionally:

1. Damage or destroy any property with the intent to defraud an insurer; or
2. Tamper with the property of another so as to recklessly endanger the safety or property of another; or
3. Damage, destroy, maim or deface any domestic animal or other property of another; or
4. Purposely or recklessly shoot or propel a missile or other object against a motor vehicle, airplane, boat, locomotive or train.

B. If the verified damage does not exceed Three Hundred Dollars (\$300.00), Criminal Mischief is a Class D offense.

C. If the verified damage is greater than Three Hundred Dollars (\$300.00), but does not exceed One Thousand Dollars (\$1,000.00), Criminal Mischief is a Class C offense.

D. If the verified damage is greater than One Thousand Dollars (\$1,000.00), Criminal Mischief is a Class B offense.

3.4.506 Burglary

A. It shall be unlawful to enter in any manner, any dwelling, building, office, room, apartment, shop warehouse, store, mill, barn, stable, garage, tent, vessel, railroad car, airplane, motor vehicle, trailer, or semi-trailer, mobile home, or any similar enclosed structure of another without consent with the intent to steal or commit any offense punishable by imprisonment.

B. Burglary is a Class A offense.

3.4.508 Breaking and Entering

A. It shall be unlawful to break into by any force whatsoever and enter in any manner any dwelling, building, office, room, apartment, shop warehouse, store, mill, barn, stable, garage, tent, vessel, railroad car, airplane, motor vehicle, trailer, or semi-trailer, mobile home, trunk, drawer, box, coin-operated machine, or similar structure, object of device of another without consent with the intent to:

1. Cause annoyance or injury to any person therein; or
2. Cause damage to any property therein; or
3. Commit any offense therein; or
4. Steal; or
5. Cause or actually cause, whether intentionally or recklessly, fear for the safety of another.

B. Breaking and Entering is a Class A offense.

3.4.510 Criminal Trespass

A. It shall be unlawful to knowingly or intentionally and without express or implied consent to:

1. Enter or remain in an occupied structure of another;
2. Enter or remain in or upon the premises of another; or
3. Enter any vehicle or part thereof of another.

B. Consent may be obtained either by permission from the property owner or any other authorized person.

C. It is a complete affirmative defense to the offense of Criminal Trespass that:

1. The property was open to the public upon entry and upon being ordered to leave, the person did so without undue delay; or
2. Even though not open to the public, the person did not substantially interfere with the use of the property or damage any property, and upon being ordered to leave, the person did so without undue delay; or

3. On rural lands fenced with barbed wire or other types of fencing normally meant to enclose or exclude domestic animals, signs prohibiting entry or use at least six inches (6") by eight inches (8") placed upon or in plain sight next to such fence not more than one hundred fifty feet (150') apart shall create a rebuttable presumption that reasonable notice against entry or entry for certain purposes had been given.

D. Criminal Trespass is a Class B offense.

3.4.512 Larceny

A. It shall be unlawful to knowingly or intentionally take or carry away tangible or intangible personal property by fraud or stealth with the intent to deprive the owners thereof of use and control of the property. Larceny includes:

1. Intending to deprive the owner of his property;
2. Using, concealing, or abandoning the property in such a manner as to deprive the owner of the property;
3. Using, concealing, or abandoning the property, knowing that such use, concealment, or abandonment will probably deprive the owner of the property.
4. Obtaining control over lost or mislaid property when the person:
 - a. Knows or learns the identity of the owner or knows, is aware, or learns of a reasonable method of identifying the owner;
 - b. Fails to take reasonable measures to restore the property to the owner; and
 - c. Has the purpose of depriving the owner permanently of the use or benefit of the property.

B. If the verified value of the property is less than Three Hundred Dollars (\$300.00), Larceny is a Class C offense.

C. If the verified value of the property is greater than Three Hundred Dollars (\$300.00) but less than One Thousand Dollars (\$1,000.00), Larceny is a Class B offense.

D. If the verified value of the property is greater than One Thousand Dollars (\$1,000.00), Larceny is a Class A offense.

3.4.513 Theft

(a) A person is guilty of theft if he obtains or exercises unauthorized control over the property of another with the purpose of depriving him thereof. Theft may be accomplished in any of the several ways, including, but not limited to:

- (1) Physical taking of the property;

- (2) Deception;
- (3) Extortion;
- (4) Misuse of property lost, mislaid, or delivered by mistake;
- (5) Failure to make required disposition of funds or property received;
- (6) Using a check, knowing or believing that it will not be honored by the bank;
- (7) Using a debit/credit card with the knowledge that the card has been revoked, cancelled, or stolen; or
- (8) Receiving, retaining, or disposing of the property of another knowing that it has been stolen or believing that it has probably been stolen.

(b) Definitions Applicable to Theft Offenses –

- (1) Deception – intentionally or recklessly creating or reinforcing a false impression, preventing another from acquiring information which would affect his judgment of a transaction, or failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of property.
- (2) Extortion – threatening to inflict any harm on another person which would substantially hurt that person with respect to his health, safety, business, calling, career, financial condition, reputation, or personal relationship.
- (3) Property – anything of value, including real estate, tangible or intangible personal property, contract rights, interest in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, commodities of a public utility such as water, gas or electricity, trade or business secrets which the owner thereof intends to be available only to persons selected by him, or any other right, object, labor or services valuable to the owner or provider.
- (4) Purpose to Deprive – to have a conscious object to withhold property permanently for extended period that a substantial portion of its value is lost, or to restore the property only upon payment of a reward or other compensation; or to dispose of the property under circumstances that make it unlikely that the owner will recover it unharmed.

(c) Theft of property as provided in this Section shall be punishable as follows:

- (1) If the value of the property involved is \$1,000.00 or more, the offense shall be a Class A offense.
- (2) If the value of the property involved is \$200.00 or more, but less than \$1,000.00, the offense shall be a Class B offense.

(3) If the value of the property involved is less than \$200.00, the offense shall be a Class C offense.

(4) If no evidence as to the value of the property involved is presented and the value of such is not obvious without presentation of such evidence, and if it is otherwise proven that a theft offense under this section has been committed, the offense shall be a Class C offense.

3.4.514 Extortion

A. It shall be unlawful to take, receive, or control the use or disposition of property of another with the intent to deprive him of the possession or use thereof by threatening to:

1. Cause bodily harm to any person; or
2. Commit any offense; or
3. Unlawfully injure or destroy any property; or
4. Expose any personal information or secret not public knowledge tending to expose any person to hatred, contempt, or ridicule, or to impair his business reputation, except by institution of legal proceedings to recover the debt demanded or proper reports to bona fide credit agencies; or
5. Unlawfully take or withhold official action.

B. Extortion is a Class A offense.

3.4.516 False Pretenses

A. It shall be unlawful to obtain, take, or receive any property of another by means of a trick or deception, or false or fraudulent representation, statement, or pretense with the intent to deprive the owner thereof.

B. False Pretenses is a Class B offense.

3.4.518 Embezzlement

A. It shall be unlawful to wrongfully or fraudulently appropriate for a person's own use or the use of another any property with which the person has been entrusted.

B. As used in this Section, Embezzlement includes, but is not limited to:

1. The spending of another's funds for goods or services beyond the express purpose for which the funds were placed in the person's custody; or
2. The spending of a legally protected person's funds, by the person having control over the funds, in a manner inconsistent with the protected person's best interests or welfare.

- C. Embezzlement is a Class A offense.

3.4.520 Receiving Stolen Property

A. It shall be unlawful to possess, receive, buy, or conceal any personal property that has been stolen or otherwise obtained from its true owner in violation of this Code or other criminal laws with the intent to deprive the true owner thereof.

- B. Receiving Stolen Property is a Class B offense.

3.4.522 Theft of Property Lost, Mislaid or Delivered by Mistake

A. It shall be unlawful to fail to take reasonable measures to restore property to a person entitled thereto, with the intent to deprive the owner thereof, when it is known or reasonably suspected that the property has been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient.

- B. Theft of Property Lost, Mislaid or Delivered by Mistake is a Class B offense.

3.4.524 Theft of Services by Deception

A. It shall be unlawful to obtain services known to be available only for compensation by deception, threat, force or any other means with the intent to avoid due payment therefore.

- B. Theft of Services by Deception is a Class B offense.

3.4.526 Unlawful Use of a Computer

A. It is unlawful to use a computer knowingly or intentionally by:

1. Obtaining the use of any computer, computer system, or computer network without the consent of the owner; or
2. Altering or destroying or causing another to alter or destroy a computer program or computer software without the consent of the owner; or
3. Obtaining the use of, or altering or destroying a computer, computer system, computer network, or any part thereof, for the purpose of obtaining money, property, or computer services from the owner of the computer, computer system, computer network, or from any other person.

B. If the verified value of the damaged property or services obtained does not exceed Three Hundred Dollars (\$300.00), Unlawful Use of a Computer is a Class C offense.

C. If the verified value of the damaged property or services obtained is greater than Three Hundred Dollars (\$300.00), but less than One Thousand Dollars (\$1,000.00), Unlawful Use of a Computer is a Class B offense.

D. If the verified value of the damaged property or services is greater than One Thousand Dollars (\$1,000.00), Unlawful Use of a Computer is a Class A offense.

3.4.528 Forgery

A. It shall be unlawful to alter any writing of another without his authority, or to make, complete, execute, authenticate, issue or transfer any writing so that it purports to be the act of another who did not authorize the act, with the intent to defraud or injure anyone.

B. "Writing" includes but is not limited to printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, money, and other symbols of value, right, privilege, or identification.

C. Forgery is a Class A offense.

3.4.530 Fraudulent Handling of a Recordable Instrument

A. It shall be unlawful to destroy, remove or conceal any will, deed, mortgage, security instrument, Tribal resolution, any Tribal record, for which the law provides public recording, or to knowingly record a false or forged instrument with the intent to deceive or injure anyone, or to conceal wrongdoing.

B. Fraudulent Handling of a Recordable Instrument is a Class A offense.

3.4.532 Tampering with Records

A. It shall be unlawful to falsify, destroy, remove, or conceal any writing of records with the intent to deceive or injure anyone or to conceal any wrongdoing.

B. Tampering with Records is a Class B offense.

3.4.534 Bad Checks

A. It shall be unlawful to issue or pass a check or similar sight order for the payment of money, for the purpose of obtaining any money, property, or other thing of value for any services, rent, wages or salary, knowing or believing that it will not be honored by the depository.

B. If the person issuing the check or other order has an account with the depository, failure to make good the check within seven (7) days after written notice of non-payment has been sent by the holder by certified mail, is *prima facie* evidence that the person knew that it would not be paid by the depository.

C. A first conviction for Bad Checks is a Class B offense.

D. A second or subsequent conviction for Bad Checks within five (5) years is a Class A offense.

3.4.536 Deceptive Business Practices

A. It shall be unlawful to intentionally within the course of business to:

1. Use or possess for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or

2. Sell, offer, or expose for sale, or deliver less than the represented quality or quantity of any commodity or service; or
3. Take or attempt to take more than the represented quantity of any commodity or service when furnishing the weight or measure;
4. Sell, offer or expose for sale adulterated or mislabeled commodities;
 - a. "Adulterated" means varying from the standard of composition or quality prescribed by law or commercial usage; or
 - b. "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or commercial usage; or
5. Make a substantial false or misleading statement in any advertisement addressed to the public or a substantial segment thereof for the purpose of promoting the purchase or sale of property or services; or
6. Make a false or misleading written statement for the purpose of obtaining property or credit; or
7. Make a false or misleading written statement for the purpose of promoting the sales of securities, or omit information required by law to be disclosed in written documents relating to securities.

B. It is an affirmative defense to deceptive business practice that the defendant's conduct was not knowingly or recklessly deceptive.

C. A first Deceptive Business Practice offense is a Class B offense.

D. A second or subsequent Deceptive Business Practice offense is a Class A offense.

3.4.538 Defrauding Creditors

A. It shall be unlawful to:

1. Destroy, remove, conceal, encumber, transfer, or otherwise deal with property subject to a security interest with the intent to hinder enforcement of that interest; or,
2. Deal with property with the intent to defeat or obstruct the operation of any law relating to administration of property for the benefit of creditors; or knowingly falsify any writing or record relating to the property; or knowingly misrepresent or refuse to disclose to a person entitled to administer property for the benefit of creditors, the existence, amount or location of the property, or any other information which the person could legally be required to furnish in relation to such administration.

B. Defrauding Creditors is a Class B offense.

3.4.540 Unlawful Dealing with Property by a Fiduciary

A. It shall be unlawful to deal knowingly with property that has been entrusted to one in a fiduciary capacity, or property of the Tribal government or of a financial institution, in a manner which is known to be a violation of a fiduciary duty, or which involves a substantial risk or loss to the owner or to a person for whose benefit the property was entrusted. As used in this Section, "fiduciary" includes a trustee, guardian, executor, administrator, receiver or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

B. Unlawful Dealing with Property by a Fiduciary is a Class A offense.

3.4.542 Making a False Credit Report

A. It shall be unlawful knowingly to make a materially false or misleading statement to obtain property or credit for oneself or another or to keep another person from obtaining credit.

B. Making a False Credit Report is a Class B offense.

PART 6 CRIMES AGAINST PUBLIC HEALTH, SAFETY AND WELFARE

3.4.600 Rioting

A. It is unlawful for three or more persons in a public place simultaneously to engage in tumultuous violent conduct which endangers person or property, and thereby to create a substantial risk of causing public alarm; or to assemble with two or more persons with the purpose of engaging in the above-described conduct.

B. Rioting is a Class A offense.

3.4.602 Failure to Disperse

A. It is unlawful knowingly or intentionally to fail to obey an order to disperse or leave the immediate vicinity given by a law enforcement officer or other public servant performing an enforcement function, at the scene of a riot, fire, or other public disorder or given in the course of the investigation of the commission of an accident, fire, offense or suspected offense.

B. Failure to Disperse is a Class B offense.

3.4.604 Disorderly Conduct

A. It is unlawful knowingly or intentionally to disturb the peace, cause public inconvenience, annoyance or alarm, or recklessly create a risk thereof, in a public or private place by

1. Engaging in fighting or threatening to engage in violent or tumultuous behavior;

2. Making unreasonable noise or offensively coarse utterances, gestures or displays, or addressing abusive language to any person present;
 3. Creating a hazardous or physically offensive condition by any act which serves no legitimate purpose;
 4. Obstructing vehicular or pedestrian traffic on a public way;
 5. Preventing ingress or egress into public or private places;
 6. Disturbing or disrupting any lawful assembly or public meeting;
 7. Initiating or circulating a false report or warning of a fire, impending explosion or other catastrophe in any place which could result in panic and possible endangerment of human life; or
 8. Causing or creating an explosion or impending explosion or other catastrophe in any place which could result in panic and possible endangerment of human life; or
 9. Appearing in a public or private place in an offensive or disruptive condition.
- B. A first time conviction for Disorderly Conduct is a Class B offense.
- C. A second time conviction for Disorderly Conduct within five (5) years is a Class A offense.

3.4.606 Public Nuisance

- A. It is unlawful to take any action or fail to take any action without lawful authority to do so and which action or omission:
1. Unreasonably and substantially annoys and/or endangers the comfort, repose, health, or safety of three (3) or more persons or offends public decency;
 2. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for use or passage, any lake, stream, or campground, pow-wow ground, public park, square, street, highway or road; or
 3. In any way unreasonably renders three (3) or more persons insecure in life or the use of property.
- B. Public Nuisance is a Class B offense.

3.4.608 Violation of Privacy in Communications

- A. It is unlawful, except as authorized by law, to:
1. Communicate with any person by telephone and use any obscene, lewd or profane language, suggest a lewd or lascivious act, or

2. Threaten to inflict injury or physical harm to the person or property of any person with the intent that the communication terrify, intimidate, threaten harass, annoy, or offend the person;
3. Use a telephone to extort anything of value from any person or to disturb by repeated telephone calls the peace, quiet or right of privacy of any person at the place where the telephone call or calls are received;
4. Record or cause to be recorded any conversation by use of hidden electronic or mechanical devices which reproduce conversation without the knowledge of all parties to the conversation, unless (i) the transcribing or recording is done by public officials or their employees acting within the scope of their employment or duty; (ii) the recording is of a person speaking at a public meeting; (iii) the person making the recording has given fair warning that the conversation is being recorded; or (iv) the transcribing or recording is made by a law enforcement officer as part of a criminal investigation; or
5. Read, disclose or otherwise intercept any communication addressed to another person without the permission of such person, unless directed by a court order.

B. Violation of Privacy in Communications is a Class A offense.
3.4.610 Violation of Privacy

A. Definitions.

1. "Eavesdrop" means to over-hear, record, amplify or transmit any part of an oral or written communication between others without the consent of at least one party thereto by means of any electrical, mechanical or other device.
2. "Private place" means any place where a person has a reasonable expectation to be free from casual or hostile intrusion or surveillance.

B. It is unlawful, except as authorized by law, to

1. Trespass on property with the intent to subject anyone to eavesdropping or other surveillance in a private place;
2. Install in any private place, without the consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in such place, or use any such unauthorized installation;
3. Install or use outside of any private place any device for hearing, recording, amplifying or broadcasting sounds originating in such place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there; or
4. Divulge, without the consent of the sender or receiver, the existence or contents of any message if the person knows that the message was

illegally intercepted, or if he learned of the message in the course of employment in transmitting it.

- C. Violation of Privacy is a Class B offense.

3.4.612 Harassment

A. It is unlawful, with the purpose and intent to annoy another, to insult, taunt, or challenge another in a manner likely to provoke a violent or disorderly response; or to make repeated communications anonymously or at extremely inconvenient hours, or in an offensively course language.

- B. Harassment is a Class B offense for a first conviction.
- C. Harassment is a Class A offense for a second or subsequent conviction.

3.4.614 Violation of Confidentiality

A. It is unlawful to knowingly or intentionally disclose or disseminate any information in which a person has a reasonable expectation of privacy due to a recognized privilege, including, but not limited to:

1. Attorney-client privilege;
2. Clergy-parishioner privilege;
3. Counselor-client privilege; "counselor" includes licensed marriage family therapist and psychologist;
4. Doctor-patient privilege; or
5. Husband-wife privilege.

- B. Violation of Confidentiality is a Class C offense.

3.4.616 Creation of a Public Hazard

- A. It is unlawful to knowingly create a public hazard by:
 1. Discarding in any place where it might attract children a container having a compartment with a capacity of more than 1.5 cubic-feet with an attached door or lid that automatically locks or otherwise securely fastens when closed and cannot be easily opened from the inside;
 2. Maintaining any property in a manner which could attract children and which constitutes a potential health or safety hazard to children, without taking proper steps to restrict access to the area;
 3. Failing to cover or fence with suitable protective materials a well, cistern, cesspool, mine shaft, or other hold of a depth of three (3) or more feet and a width of twelve-inches (12") or more located upon property in the person's possession; or

4. Being the owner or otherwise having possession of any property upon which industrial, construction, or other equipment is located and allowing the equipment to be maintained or operated in an unsafe manner or condition.

B. Creation of a Public Hazard is a Class B offense.

3.4.618 Cruelty to Animals

A. It is unlawful to knowingly or intentionally:

1. Torture or seriously overwork an animal;
2. Fail to provide necessary food, care, or shelter for an animal in one's custody or under one's care;
3. Abandon an animal in one's care or custody;
4. Transport or confine an animal in a cruel manner;
5. Kill, injure, or administer poison to an animal without the legal privilege to do so; or
6. Cause one animal to fight another by:
 - a. Owning, possessing, keeping or training any animal with the intent that such animal fight or engage in an exhibition of fighting with another animal;
 - b. Allowing or causing any animal to fight with another animal to menace or injure another animal;
 - c. Allowing any premises under the person's control to be used as training grounds for or an arena in which animals fight for the purpose of sport, amusement or gain; or
 - d. Participating in any exhibition in which animals are fighting for the purpose of sport, amusement or gain.

B. Cruelty to Animals is a Class A offense.

3.4.620 Criminal Defamation

A. It is unlawful to knowingly and with malicious intent to communicate to any person orally or in writing any information which one knows or should know to be false and which impeaches the honesty, integrity, virtue or reputation, or publishes the natural defects of one who is alive, or who has not been declared missing or dead for a period exceeding twenty (20) years, and thereby expose him to public hatred, contempt or ridicule. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown by way of defense.

B. Criminal defamation is a Class A offense.

3.4.622 Weapons Offense

A. Definitions.

1. "Dangerous weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury. In determining whether or not an item, object or thing not commonly known as a dangerous weapon is a dangerous weapon for purposes of this section, the character of the instrument, object or thing, the character of the wound inflicted, if any, and the manner in which the instrument, item or thing was used shall be determinative.
2. "Firearms" means pistols, revolvers, rifles, shotguns, and any device that is capable of being used as a weapon as it expels a projectile with a means of force sufficient to injure a person.
3. A firearm or other weapon shall be defined as loaded when there is an unexpended cartridge, shell or projectile in the firing position except in the case of pistols and revolvers, in which case they shall be deemed loaded when the unexpended cartridge, shell or projectile is in such position as next to be fired.

B. It is unlawful for any person except a duly-appointed law enforcement officer acting in his official capacity to:

1. Carry upon or about his person, or in a portfolio or purse, any dangerous weapon or firearm except as otherwise may be provided for in this Code.
2. Carry into any church or religious assembly, or any other place where persons are assembled for worship, amusement, educational or scientific purposes or into any public or Tribal exhibition of any kind, or any social gathering, Tribal election or political meeting or other Tribal assembly, or upon any Tribal buildings or camp grounds, any dangerous weapon, or firearm, except as may otherwise be provided for in this Code.
3. Carry a loaded firearm in a vehicle on a public road without lawful authority to do so; or to discharge any kind of firearm from a motor vehicle without lawful authority to do so; or to discharge a firearm from, upon or across any public highway without lawful authority to do so.

C. Weapons Offense is a Class A offense.

3.4.624 Aggravated Weapons Offense

A. It is unlawful to:

1. Carry a dangerous weapon concealed on the person or to threaten to use or to exhibit a dangerous weapon in a dangerous and threatening manner, or to use a dangerous weapons in a fight or quarrel; or to possess a shotgun or rifle having a barrel or barrels of less than sixteen inches (16") in length or an altered or modified shotgun or rifle less than twenty four inches (24") in overall length; or

2. Have a dangerous weapon or firearm in one's possession:
 - a. While intoxicated or otherwise under the influence of alcoholic beverages or other intoxicating substance, drug, or medicine; or
 - b. With the intent to assault another unlawfully; or
 - c. Having been declared legally incompetent.

B. Aggravated Weapons Offense is a Class A offense.

3.4.626 Dangerous Devices Offense

A. For purposes of this Section, a "dangerous device" is any box, package, contrivance, bomb, chemical compound, knife, loaded firearm or other dangerous or harmful weapon or thing constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or to strike with any of its parts unexpectedly when moved, handled or opened or after the lapse of time or under specific conditions or in a manner calculated to endanger health, life, limb or property.

B. It is unlawful to:

1. Deliver or cause to be delivered to any express, railway company or common carrier, or place in the United States Mail, or to deliver to any person, or throw or place on or about the premises or property of another or in any place where another may be injured thereby, a dangerous device, knowing it to be such, unless the threatened person is informed of the nature thereof and its placement is for some lawful purpose; or
2. Construct or contrive any dangerous device knowingly or, with the intent to injure another in his person or property; or to have a dangerous device in one's possession.

C. Dangerous Devices Offense is a Class A offense.

3.4.628 Public Intoxication

A. It is unlawful to be under the influence of an intoxicating beverage, drugs, or other controlled substance, or a substance having the property of releasing vapors, to any degree, in a public place or in a private place where one unreasonably disturbs another person or persons, under circumstances not amounting to disorderly conduct.

B. Public Intoxication is a Class C offense.

3.4.630 Tobacco Offense

A. It is unlawful to:

1. Purchase, obtain, possess, smoke, chew, inhale or ingest any product made from or with tobacco if under the age of eighteen (18) years; or
2. Sell to, or otherwise obtain or arrange to obtain tobacco or a tobacco product for a person under the age of eighteen (18) years, or knowingly

to permit such a person to operate a machine dispensing tobacco products in his place of business or in an area of a place of business over which he is charged with the management or operation.

- B. Tobacco Offense is a Class C offense.

3.4.632 Abuse of Psycho-toxic Chemicals

A. As used in this Section, "psycho-toxic" includes any glue, cement, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl alcohol, methyl alcohol, petone, pentachlorophenal, petroleum ether, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substances. The statement of listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substances without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

B. It is unlawful to purposely smell or inhale the fumes of any psycho-toxic chemicals, or to possess, purchase, or attempt to possess any psycho-toxic chemicals with the intention of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system; or to sell, give away, dispense, or distribute, or to offer to sell, give away, dispense, or distribute any psycho-toxic chemical knowing or believing that the purchase or another intends to use the chemical in violation of this section.

C. This Section shall not apply to the inhalation of anesthesia for medical or dental purposes.

D. Abuse of psycho-toxic chemicals is a Class A offense. The Court may also order any person using psycho-toxic chemicals for inhalation to be committed to a facility for treatment, if necessary, and community service.

E. Such psycho-toxic chemicals kept or used in violation of this Section are hereby declared to be contraband and civil proceedings may be had against such psycho-toxic chemicals for forfeiture as provided by law.

3.4.634 Dangerous Drug Offense

A. Controlled or counterfeit substances shall consist of all substances listed in 21 U.S.C. §812, and any other chemical substance, natural or artificial, defined as a controlled or dangerous substance, the possession, sale, distribution, or use of which is prohibited by Federal law, except peyote for use during religious purposes.

- B. It is unlawful except as authorized and controlled by Federal law, to:
1. Manufacture, distribute, possess with intent to distribute, dispense, create, possess, or cultivate a controlled or counterfeit substance; or
 2. Obtain or acquire possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

3. Possess any device, contraption, pipe, or scale used to ingest, produce or distribute a controlled substance.

C. Dangerous Drug offense is a Class A offense.

3.4.636 Trafficking in Children

A. "Child" means any person under the age of eighteen (18) years who is unmarried and not emancipated.

B. It is unlawful to:

1. Accept any compensation, in money, property or other thing of value, at any time, from the person or persons adopting a child, for services of any kind performed or rendered, or purported to be performed or rendered, in connection with such adoption;
2. Accept any compensation, in money, property or other thing of value, from any other person, in return for placing, assisting to place, or attempting to place a child for adoption or for permanent care in a foster home;
3. Offer to place, or advertise to place, a child for adoption or for care in a foster home, as an inducement to any woman to enter an institution or home or other place for maternity care or for the delivery of a child;
4. This Section does not apply to attorneys or advocates licensed by the Court receiving reasonable fees for legal services actually rendered in the course of lawful adoptions proceedings, nor shall §A 1 or, 2 apply to any bona fide social worker or government employee receiving their normal salary and making such placements as part of official duties.

C. Trafficking in Children is a Class A offense.

3.4.638 Contributing to the Delinquency of a Minor

A. It shall be unlawful for a person eighteen (18) years of age or older to knowingly or intentionally:

1. Sell, give or otherwise make beer, liquor, wine or other alcoholic beverages available to a person under the age of eighteen (18) years; or
2. Encourage, cause or contribute to the delinquency or unlawful conduct of a minor under the age of eighteen (18) years by act or omission.

B. Contributing to the Delinquency of a Minor is a Class B offense.

3.4.640 Fireworks Offense

A. SALE OF FIREWORKS IN NON-DESIGNATED AREAS PROHIBITED. Any person who sells, offers, consigns, loans, barter, exchanges, or otherwise makes available for use and any distribution, any fireworks at any non-designated areas within the exterior boundaries of the Reservation shall be guilty of an offense, and upon conviction of such offense shall be

sentenced to a maximum of six (6) months confinement, or fined a maximum of Seven Hundred Fifty Dollars (\$750.00) or both.

B. ILLEGAL USE OF FIREWORKS IN NON-DESIGNATED AREAS. Any person who ignites, sets off, explodes, discharges or similarly uses any fireworks at any time and at any non-designated area within the exterior Reservation boundaries shall be guilty of an offense, and upon conviction shall be sentenced to a maximum of six (6) months confinement, or fined a maximum of Seven Hundred, Fifty Dollars (\$750.00) or both.

C. CONTROL OF FIREWORKS USE BY CHILDREN. Any person who, having lawful custody or similar responsibility for the care and protection of a minor under the age of eighteen (18) years, fails to control or otherwise prevent such minor from illegally using fireworks in violation of these fireworks laws, shall be guilty of an offense, and upon conviction shall be sentenced to a maximum of six (6) months confinement, or fined a maximum of Seven Hundred Fifty Dollars (\$750.00) or both.

D. POSSESSION OF ILLEGAL FIREWORKS. Any person who possesses any fireworks without a valid permit, shall be guilty of an offense and upon conviction shall be sentenced to a maximum of six (6) months confinement or fined a maximum of Seven Hundred Fifty Dollars (\$750.00) or both.

E. REGULATION OF FIREWORKS USE. Any person who throws fireworks at or in the direction of any person or group of persons, or at passing cars, shall be guilty of an offense and upon conviction shall be sentenced to a maximum of six (6) months confinement or fined a maximum of Seven Hundred Fifty Dollars (\$750.00) or both.

F. EXCEPTIONS. The Tribe is hereby authorized to sell 1.4G or less fireworks at an establishment operated by the Tribe's Enterprises Department. The use of any fireworks purchased from such Tribal establishment may be used only in areas within the Reservation specifically designated by the Tribe. Any person setting off fireworks in any designated area must obtain a Tribal permit to use the area. Fireworks may only be purchased on the Reservation at a Tribally-owned establishment by a person eighteen (18) years old or older. The sale and use of fireworks in compliance with this Subsection shall be an exception to the other subsections in this Section.

3.4.642 Consuming Controlled Substances while Pregnant

A. It is unlawful for any pregnant person to consume, or otherwise ingest or use any narcotic drug or controlled substance, unless such act is authorized by the written permission of a licensed physician or dentist.

B. Consuming Controlled Substances While Pregnant is a Class A offense.

3.4.644 Causing Child to Suffer from Drug Addiction

A. It is unlawful for a person responsible for the welfare of a child to cause the child to suffer from congenital drug addiction or fetal alcohol syndrome due to the person's faults or habits.

B. Causing Child to Suffer from Drug Addiction is a Class A offense.

PART 7 CRIMES AGAINST PUBLIC JUSTICE

3.4.700 Bribery

A. It is unlawful to knowingly and intentionally ask for, offer, confer, agree to confer upon another, solicit, accept, or agree to accept from another any benefit, including pecuniary, as a consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant or voter.

B. It is not a defense that a person whom the offender sought to bribe was not qualified to act in the desired way.

C. Bribery is a Class B offense.

3.4.702 Improper Influence in Official Matters

A. It is unlawful to:

1. Threaten unlawful harm to any person with the intent to influence another's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official, or voter;
2. Threaten harm to any public servant or relative of a public servant with the intent to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial, legislative, or administrative proceeding;
3. Threaten harm to any public servant or official or relative of either with the intent to influence him to violate his duty; or
4. Privately address any public servant who has or will have official discretion in a judicial or administrative proceeding and make thereby any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law.

B. It is not a defense to prosecution under this Section that the person sought to be influenced was not qualified to act in the desired way.

C. Improper Influence in Official Matters is a Class B offense.

3.4.704 Perjury

A. It is unlawful knowingly and intentionally to make a false statement under oath or affirmation, or to swear or affirm the truth of a statement previously made when the statement is false and material in any court proceeding.

B. Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding.

C. It is not a defense to prosecution under this Section that the declarant mistakenly believed the falsification to be immaterial. Whether or not a falsification is material, is a question of law to be decided by the Court.

D. It is not a defense to prosecution under this Section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement.

E. Perjury is a Class A offense.

3.4.706 False Swearing

A. It is unlawful to knowingly and intentionally make a false statement under oath or equivalent affirmation, or to swear or affirm the truth of a false statement previously made when the person does not believe the statement to be true, and:

1. The falsification occurs in an official proceeding;
2. The falsification is purposely made to mislead a public servant in performing his official function; or
3. The statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

B. False Swearing is a Class A offense.

3.4.708 Tampering with Witnesses

A. It is unlawful for a person believing that an official proceeding or investigation is pending or about to be instituted, to attempt to:

1. Induce or otherwise cause a witness or informant to testify or falsely inform;
2. Withhold any testimony, information, document or other material evidence;
3. Evade legal process summoning the witness to testify or supply evidence; or
4. Absent himself from any proceeding or investigation to which he has been legally summoned.

B. Tampering with Witnesses is a Class A offense.

3.4.710 Tampering with Evidence

A. It is unlawful, while believing that an official or investigation is pending or about to be instituted, to:

1. Alter, destroy, conceal or remove any record, document, or physical object with the intent to impair its availability or reliability in such proceeding or investigation;
2. Make, present, or use any record, document or physical object knowing it to be false and with a purpose to mislead a public servant who is or may be engaged in such a proceeding or investigation.

- B. Tampering with Evidence is a Class A offense.

3.4.712 Tampering with Public Records

- A. It shall be unlawful knowingly and intentionally to:
 - 1. Make a false entry in, or false alteration of, any record, document or physical object belonging to or received or kept by the Tribe or government for information or record, or required by law to be kept by others for information of the Tribe or government;
 - 2. Make, present or use any record, document or physical object, knowing it to be false, and with the purpose that it be taken as a genuine part of information or records referred to in Subsection 1 above; or
 - 3. Purposely and unlawfully to destroy, conceal, remove or otherwise impair the reliability or availability of such record, document or physical object.
- B. Tampering with Public Records is a Class A offense.

3.4.714 Tampering With Public Property

- A. It is unlawful to knowingly or intentionally:
 - 1. Steal, deface, mutilate, alter, falsify, or remove all or part of any record, map, book, document or thing, or any court documents or records, placed or filed in any public office, or with any public officer, or to permit another to do so;
 - 2. Injure, deface or remove without authority to do so any sign, signal, monument or other marker placed or erected by the Tribe or Federal Government; or
 - 3. Deface, obliterate, tear down, or destroy any copy or transcript or extract from any law or any proclamation, advertisement, or notice set or displayed by any public officer or court.
- B. Tampering with Public Property is a Class A offense.

3.4.716 Damaging Public Property

- A. It is unlawful to knowingly or intentionally:
 - 1. Break down, pull down or otherwise damage or destroy any jail, police vehicle, police property or any other place of detention or confinement;
 - 2. Dig up, remove, displace or otherwise damage or destroy any public roadway, highway, bridge, cattle guard, private road, private bridge, or other public building or structure;

3. Remove or damage any milepost, guidepost, or road or highway sign, highway marker, cattle guard, or any inscription on them while such is erected along a road or highway; or
4. Remove, damage, deface or destroy any public building, structure or any personal property belonging to the Tribe or to any other government or government agency.

B. Damaging Public Property is a Class A offense.

3.4.718 False Reports to Officers

A. It is unlawful to knowingly or intentionally:

1. Give false information to any law enforcement officer or any fire department officer;
2. Report to any law enforcement officer or fire department officer an offense or other incident within their concern, knowing that the alleged offense or incident did not occur; or
3. Pretend to furnish such officers with information relating to an offense or incident when the person does not have information relating to such offense or incident.

B. False Reports to Officers is a Class B offense.

3.4.720 Resisting Arrest

A. It is unlawful to knowingly, intentionally or recklessly to prevent or attempt to prevent a law enforcement officer from making an arrest by:

1. Use or threat of physical force or violence against a law enforcement officer or another; or
2. Use of other means which creates a risk of causing physical injury to a law enforcement officer or another.

B. Resisting Arrest is a Class A offense.

3.4.722 Escape

A. It is unlawful to:

1. Remove oneself from official detention or fail to return to official detention following temporary leave granted for a specific purpose or period; or
2. Knowingly procure, make, or possess anything which may facilitate escape while being held in official detention;
3. Aid another person to escape official detention; or

4. Knowingly provide a person in official detention with anything which may facilitate such a person's escape.

B. "Official detention" means arrest, detention in any facility of a person in custody that has been charged or convicted of a crime; or any other detention for law enforcement purposes. It does not include a person under supervision for probation.

- C. Escape is a Class A offense.

3.4.724 Providing Contraband

A. It is unlawful to knowingly or intentionally provide a person in official detention with alcoholic beverages, drugs, weapons, implements of escape or any other items or substances which the person knows are unlawful or improper for the detainee to possess.

- B. Providing Contraband is a Class A offense.

3.4.726 Bail Jumping

A. It is unlawful to fail to appear in person without just cause at the time and place, designated for the person's appearance after having been released on bail or on his own recognizance by court order or other lawful authority upon condition that he subsequently appear.

B. Bail Jumping is a Class B offense when the original charge is a Class C or D offense.

C. Bail Jumping is a Class A offense when the original charge is a Class A or B offense.

3.4.728 Obstruction of Justice

A. It is unlawful to knowingly or intentionally, with the purpose to hinder the apprehension, prosecution, conviction or punishment of another for the commission of an offense, to:

1. Harbor or conceal an offender;
2. Warn an offender of impending discovery or apprehension, except if such warning is given in an attempt to bring the offender into compliance with the law;
3. Provide or aid in providing a weapon, money, transportation, disguise or other means of avoiding apprehension or effecting escape;
4. Prevent or obstruct by means of force, deception, or intimidation anyone from performing an act that might aid in the discovery or apprehension of an offender;
5. Conceal or destroy physical evidence of the offense, or tamper with a witness, informant, document or other source of information, regardless of its admissibility into evidence;

6. Volunteer false information to a law enforcement officer for the purpose of preventing the apprehension of an offender; or
7. Obstruct by force, threat, bribery or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of an offender.

B. Obstruction of Justice is a Class A offense.

3.4.730 Impersonating a Public Servant

A. It is unlawful to pretend falsely to hold a position in public service with the purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his detriment.

B. Impersonating a Public Servant is a Class B offense.

3.4.732 Obstructing Governmental Function

A. It is unlawful to:

1. Use force, violence, intimidation, or engage in any other unlawful act with a purpose to interfere with a public servant performing or purporting to perform an official function; or
2. Obstruct, impair, or prevent the administration of law or other governmental function knowingly and purposefully by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with a crime, refusal to submit to arrest, failure to perform a duty other than an official duty, or any other means of avoiding compliance with the laws without affirmative interference with governmental functions.

B. Obstructing Governmental Function is a Class A offense.

3.4.734 Failure to Obey a Law Enforcement Officer

A. It is unlawful knowingly, intentionally or recklessly to fail to obey the command or direction of any law enforcement officer.

B. Failure to Obey a Law Enforcement Officer is a Class A offense.

3.4.736 Refusing to Aid an Officer

A. It is unlawful to knowingly, intentionally or recklessly refuse to aid a law enforcement officer or fireman in the performance of his official duties when called upon by the officer to do so.

B. Refusing to aid an officer is a Class A offense.

3.4.738 Failure to Obey a Lawful Order of the Court

A. It is unlawful to knowingly or intentionally fail to obey an order, subpoena, warrant or command duly made, issued, or given by the Court or any officer thereof or otherwise issued according to law without just cause.

B. This Section shall not apply in a civil action where default or a similar remedy is available to the other party.

C. Failure to Obey a Lawful Order of the Court is a Class A offense.

3.4.740 Official Unlawful Action

A. It is unlawful for a public servant with the intent to materially benefit himself or to harm another to:

1. Commit an unauthorized act which purports to be an act of his office, or refrain from performing a non-discretionary duty imposed upon him by law, knowingly or intentionally; or
2. Knowing that official action is contemplated or relying on information which he has acquired by virtue of his office or from another public servant which has not been made public:
 - a. Acquire or divest himself of a valuable interest in any property transaction, or enterprise which may be affected by such action or information; or
 - b. Speculate or wager on the basis of such action or information, or knowingly aid another to do any of the foregoing.

B. Official Unlawful Action is a Class A offense.

3.4.742 Special Influence

A. It is unlawful to solicit, receive, or agree to receive any financial benefit as consideration for exerting special unlawful influence upon a public servant in order to influence that public servant to violate the law or to exercise his discretion in a particular fashion or procure another to do so; or to offer, confer or agree to confer any financial benefit, receipt of which is prohibited by this section.

B. Special Influence is a Class B offense.

3.4.744 Doing Business without a License

A. It is unlawful to commence or carry on any business, trade, profession, or vocation the operation of which is required by law to be licensed, without that license.

B. Doing Business without a License is a Class C offense.

3.4.746 Criminal Contempt

A. It is unlawful to knowingly or intentionally engage in any of the following conduct:

1. Disorderly, contemptuous, or insolent behavior committed during the sitting of the Court, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due its authority;
2. Breach of the peace by causing a disturbance directly tending to interrupt Court proceedings;
3. Purposeful disobedience or refusal of lawful process or other mandate of the Court;
4. Unlawful refusal to be sworn as a witness in any Court proceeding or, after being duly sworn, unlawful refusal to answer any legal and proper question;
5. Deliberate publishing of a false or grossly inaccurate report of a Court proceeding; or
6. Failure to obey any mandate, process or notice regarding service as a juror.

B. Criminal Contempt is a Class A offense.