

# FALLON PAIUTE-SHOSHONE TRIBE



## LAW AND ORDER CODE

### Title 5

### Code of Criminal Offenses

# Fallon Paiute-Shoshone Tribe

## Law & Order Code

### LAW & ORDER CODE TITLE 5 CODE OF CRIMINAL OFFENSES

**Title 5 Approved by FBC June 12, 2018**

**Resolution No. 18-F-131**

**Effective August 1, 2018**

**Amended April 9, 2019 by Resolution No. 19-F-061**

**(Rescinded Section 5-30-060 – Domestic Violence based on Adoption of  
Title 13 – Domestic Violence)**

**Amended July 23, 2019 by Resolution No. 19-F-080**

**(Added Section 5-30-055 – Stalking; Effective July 23, 2019)**

**Amended October 10, 2019 by Resolution No. 19-F-190**

**(Revised Section 5-30-021 – Battery; Added Section 5-50-025 - Unlawful Contact with Child or  
Person with Mental Illness; Added Section 5-50-050 – Elder and Vulnerable Adult Abuse;  
Added Section 5-50-060 - Failure to Report Elder or Vulnerable Adult Abuse or Neglect;  
Revised 5-60-090 - Interfering with Law Enforcement Procedures; Revise Section 5-70-050 –  
Weapons Offenses; Added Section 5-70-065 - Purchase, Consumption or Possession of  
Alcoholic Beverage by Person Under 21; Penalties; Exceptions;  
All Effective November 1, 2019)**

**Amended by Resolution No. 20-F-064 on April 28, 2020 (Added Section 5-60-150).**

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**Amended by Resolution No. 20-F-064 on April 28, 2020 (Added Section 5-60-150).**

**5-10                    GENERAL PROVISIONS**

**5-10-010            Voluntary Act**

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

**5-10-020            Required Mental State**

- (a) A person is not guilty of an offense unless he acted intentionally, recklessly, or negligently, as the law may require, with respect to each element of the offense, or unless his acts constitute an offense involving strict liability.
- (b) If negligence is the mental state specified in the definition of an offense, someone may also be convicted if he acts intentionally or recklessness is the mental state specified in the definition of an offense, someone may also be convicted if he acts intentionally.

#### **5-10-030 Definitions of Required Mental States**

- (a) Intentionally – A person acts intentionally if it is his conscious objective to act as he is acting, or if he is aware or practically certain that a particular result will be caused by his conduct.
- (b) Recklessly – A person acts recklessly when he consciously disregards a substantial and unjustifiable risk that a particular result will be caused by his conduct.
- (c) Negligently – A person acts negligently when he should be aware of a substantial and unjustifiable risk that a particular result will be caused by his conduct.
- (d) Strict Liability – ‘Strict Liability’ means that no particular mental state is required in the definition of the offense; commission of the act alone is sufficient.

#### **5-10-040 Prosecution for Multiple Offenses**

When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

- (a) One offense is included in the other; or
- (b) One offense consists only of a conspiracy, solicitation or an attempt to commit the other; or
- (c) Inconsistent findings of fact are required to establish the offenses; or
- (d) The offense is defined as a continuing course of conduct and the defendant’s course of conduct was uninterrupted, unless it is provided that specific periods of such conduct constitute separate offenses.

#### **5-10-050 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 it is specifically provided that ignorance or mistake is a defense.

#### **5-10-060 Ignorance or Mistake of the Law**

A belief that conduct does not legally constitute an offense is a defense only when the law defining the offense has not been published or reasonably made available prior to the person’s conduct.

#### **5-10-070 Actions by Good Samaritan for Drug Overdose**

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

- (b) Notwithstanding any other provision of law, a health care professional otherwise authorized to prescribe an opioid antagonist may, directly or by standing order, prescribe and dispense an opioid antagonist to a person at risk of experiencing an opioid-related drug overdose or to a family member, friend or other person in a position to assist a person at risk of experiencing an opioid-related drug overdose. Any such prescription must be regarded as being issued for a legitimate medical purpose in the usual course of professional practice.
- (c) A person who, acting in good faith and with reasonable care, prescribes or dispenses an opioid antagonist pursuant to Subsection (b), is not subject to any criminal or civil liability or any professional disciplinary action for:
  - (1) Such prescribing or dispensing; or
  - (2) Any outcomes that result from the eventual administration of the opioid antagonist.
- (d) Notwithstanding any other provision of law:
  - (1) Any person, including, without limitation, a law enforcement officer, acting in good faith, may possess and administer an opioid antagonist to another person whom he or she reasonably believes to be experiencing an opioid-related drug overdose.
  - (2) A properly trained emergency medical technician, advanced emergency medical technician or paramedic is authorized to administer an opioid antagonist as clinically indicated.
- (e) A person who, acting in good faith and with reasonable care, administers an opioid antagonist to another person whom the person believes to be experiencing an opioid-related drug overdose is immune from criminal prosecution, sanction under any professional licensing statute and civil liability for such act.
- (f) The provisions of this section do not create any duty to prescribe or dispense an opioid antagonist. A person who declines to prescribe or dispense an opioid antagonist is not subject to any criminal or civil liability or any professional discipline for any reason relating to declining to prescribe or dispense the opioid antagonist.

#### **5-10-080 Accomplice Liability**

- (a) A person is an accomplice of another person in the commission of an offense if, with the purpose of promoting or facilitating the offense, he:
  - (1) Solicits such other person to commit it; or
  - (2) Aids or agrees or attempts to aid such other person in planning or committing it.
- (b) A person is not an accomplice in an offense if he terminates his participation prior to the commission of the offense, and wholly deprives it of effectiveness, or gives timely warning to the police or otherwise makes a proper effort to prevent the commission of the offense.
- (c) An accomplice may be convicted on proof of the commission of an offense and of his participation, even though the person who is claimed to have committed the offense has not been prosecuted for, or convicted of, the same or any other offense.

#### **5-10-090 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 a corporation 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 a corporation or unincorporated association having primary responsibility of 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.

## **5-20            ATTEMPT, CONSPIRACY, AND SOLICITATION**

### **5-20-010       Attempt**

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

### **5-20-020       Conspiracy**

- (a) A person is guilty of conspiracy if he agrees with one or more other persons to engage in conduct constituting an offense, and any one of them commits an overt act towards the commission of the agreed offense.
- (b) Conspiracy to commit a Class A offense is a Class A offense; conspiracy to commit a Class B offense is a Class B offense; conspiracy to commit a Class C offense is a Class C offense; and conspiracy to commit a Class D or E offense is not an offense;
- (c) It is a defense to a prosecution for conspiracy that the person made an effort to withdraw from the conspiracy as defined in Section 5-10-080(b).

### **5-20-030       Solicitation**

A person is guilty of solicitation when he, intending that another person commit an offense, entices, advises, incites, orders, or otherwise encourages such other person to commit an offense; solicitation to commit a Class A offense is a Class A offense; solicitation to commit a Class B offense is a Class B offense; solicitation to commit a Class C offense is a Class C offense; solicitation to commit a Class D offense is a Class D offense; solicitation to commit a Class E offense is a Class E offense.

## **5-30            OFFENSES INVOLVING DANGER TO THE PERSON**

### **5-30-010       Criminal Homicide**

A person is guilty of criminal homicide if he intentionally, recklessly or negligently causes the death of another human being. Criminal homicide is a Class A offense. If the offense is found to have been committed intentionally, no suspension of sentence or parole shall be granted, and the maximum imprisonment shall be imposed.

**5-30-020      Assault: Definition; Penalties**

- (a) As used in this section, “assault” means an unlawful attempt, coupled with the present ability to commit a violent injury on the person of another.
- (b) Any person convicted of an assault shall be punished:
  - (1) If the assault is not made with the use of a deadly weapon, or the present ability to use a deadly weapon, for a Class A offense.
  - (2) If the assault is made with the use of a deadly weapon, or the present ability to use a deadly weapon, for a Class A offense, by imprisonment not less than 6 months nor more than 1 year, and may be further punished by a fine of not more than \$5,000.00.

**5-30-021      Battery: Definition; Penalties**

- (a) As used in this section:
  - (1) “Battery” means any willful and unlawful use of force or violence upon the person of another.
  - (2) “Child” means a person less than 18 years of age.
  - (3) “Officer” means:
    - (a) A Tribal Police Officer as defined in Title 4, section 4-10-010(o).
    - (b) A person employed in a full-time salaried occupation of fire-fighting or emergency medical personnel for the benefit or safety of the public;
    - (c) A member of a volunteer fire department, including emergency medical personnel; or
    - (d) Any local, state or federal police officer or public safety officer responding to assist Tribal authorities.
- (b) Any person convicted of a battery, other than a battery committed by an adult upon a child which constitutes child abuse, shall be punished:
  - (1) If the battery is not committed with a deadly weapon, and no substantial bodily harm to the victim results, for a Class B offense.
  - (2) If the battery is not committed with a deadly weapon, and substantial bodily harm to the victim results, for a Class A offense by imprisonment of not less than 6 months, nor more than 1 year, and may be further punished by a fine of not more than \$5,000.00.
  - (3) If the battery is committed upon an officer and:
    - (a) The officer was performing his duty;
    - (b) The officer suffers bodily harm; and
    - (c) The person charged knew or should have known that the victim was an officer, for a Class A offense.
  - (4) If the battery is committed with the use of a deadly weapon for a Class A offense, by imprisonment for 1 year and by a fine of not more than \$5,000.00.
- (c) “Substantial bodily harm” as used in this section means bodily injury that creates a significant risk of death or that causes bodily injury involving a temporary but substantial disfigurement, a temporary but substantial loss or impairment of the function of any body part or organ, or a fracture of any body part; or significant physical pain.

[Amended October 10, 2019 by Resolution No. 19-F-190]

**5-30-027 Provoking Assault; Penalty**

Every person who shall, by word, sign or gesture, willfully provoke, or attempt to provoke another person to commit an assault shall be punished for a Class E offense by a fine of not more than \$200.00.

**5-30-030 Unlawful Restraint; Kidnapping**

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

**5-30-040 Custodial Interference**

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

**5-30-050 Sexual Offenses**

- (a) Statutory Rape
  - (1) A person eighteen (18) years of age or older is guilty of statutory rape if he or she has sexual intercourse with a person under the age of sixteen (16) years, with or without such minor's consent. However, the provisions of this Subsection (a) shall not apply to conduct between married persons.
  - (2) It is a defense for the offender to prove that he or she reasonably believed the child to be above the age of sixteen (16) years.
  - (3) Statutory rape is a Class A offense.
- (b) Sexual Assault

- (1) A person is guilty of sexual assault if he or she has sexual intercourse with another person against the will of such person.
- (2) Sexual assault is a Class A offense.
- (c) Definition of Intercourse – For purposes of this Section 5-30-050, sexual intercourse shall mean oral, anal, or genital intercourse. Any sexual penetration, including with any object, however slight, is sufficient to constitute sexual intercourse.
- (d) Indecent or Obscene Exposure - Any person who with willful intent makes an open and indecent or obscene exposure of his person, or of the person of another, is guilty of a Class B offense.
- (e) Lewdness with Child under 15 years – Any person who willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crimes of sexual assault, upon or with the body, or any part or member thereof, of a child fifteen (15) years of age or younger, with the intent to arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, shall be guilty of a Class A offense.
- (f) The consent of a child sixteen (16) years of age or younger shall not be a defense to any offense under this section.

### **5-30-055 Stalking**

- (a) Definitions:
  - (1) "Credible threat" means a verbal or written threat, or a threat implied by a pattern of conduct, or combination of such verbal/written statements and conduct, either directly or through a third party, made with the intent to place the person who is the target of the threat in reasonable fear of his/her safety. The main standard for establishing a credible threat is the victim's perception of a threat to his/her safety. The second criteria will be the apparent ability of the defendant to carry out the threat, whether verbal, written, or implied through a willful pattern of conduct. The third standard is the ability to identify and relate a pattern of corroborated stalking behavior.
  - (2) "Harass" means a knowing and willful pattern of conduct directed at a specific person, either directly or through a third party, which seriously alarms, annoys, torments, or terrorizes the person, and which serves no legitimate purpose. A "legitimate purpose" includes but is not limited to acts that are otherwise protected or authorized by Constitutional or statutory law or regulation, order of a court of competent jurisdiction, or other lawful authority. Harassing behavior can include but is not limited to:
    - (A) Vandalism;
    - (B) Annoying or threatening telephone calls;
    - (C) Following or other violations of an order for protection;
    - (D) Actual Assaults;
    - (E) Sending unwanted letters;
    - (F) Sending unwanted messages or threats through third parties;
    - (G) Showing up at a victim's home or workplace;
    - (H) Attempting to obtain private information about the victim through others;
    - (I) Leaving gifts for the victim;
    - (J) Disabling or otherwise tampering with the victim's vehicle;



- (K) Taking mail from the victim's mailbox;
  - (L) Entering the victim's home or place of residence whether the victim is there or not there;
  - (M) Parking near or driving by the victim's residence or workplace for no legitimate reason; and
  - (N) Using agencies or institutions in a manner that constitutes a pattern of conduct consistent with retaliation or harassment, by initiating investigations, restrictions or sanctions against the victim.
- (3) "Pattern of conduct" means conduct which has caused the victim to suffer substantial emotional distress or fear. This course of conduct should contain a series of acts carried out by the defendant over a period of time, however short, which demonstrates a continuity of purpose (i.e., to annoy, harass, follow, etc.), and which would cause a reasonable person to suffer like emotional distress or fear.
  - (4) "Family" means any spouse, parent, child, stepparent, stepchild, grandparent, grandchild, or significant other person or relative with whom the victim has a familial relationship, or who resides with the victim or any other relationship as defined in Domestic Violence Title, Section 13-10-030(b).
  - (5) "Corroborating stalking conduct" means any evidence of harassing behavior, physical evidence at the scene, records, documents, letters, unsubstantiated alibis, recorded messages, police reports, prior stalking convictions, witness information, or any other information, which would indicate a willful pattern of conduct or threat.
- (b) Stalking; Offense defined and penalties.
    - (1) Any person who, either directly or through a third party, willfully, maliciously and repeatedly harasses another person, and who is perceived to constitute a credible threat and, by such perception places a person in reasonable fear of his/her safety, or the immediate safety of his/her family, shall be deemed guilty of stalking under this Section. Any person convicted of stalking shall be punished for a Class D offense. Any victim of stalking is entitled to a protection order against the stalker.
    - (2) Any person convicted of a second or subsequent stalking offense, within five (5) years of a prior stalking offense, shall be punished for a Class C offense.
  - (c) Location of stalking perpetrator not bar to prosecution
    - (1) Any harassing or threatening behavior by the perpetrator, which meets the criteria of a credible threat, accomplished either directly or through a third party, and as corroborated through admission, witness testimony, telephone records, postal marks, or order/delivery records as being initiated outside the boundaries of the Reservation or Colony, will not bar prosecution under this Section. The behavior or conduct shall be considered to be a credible threat when full transmittal of the threat has been completed to the victim, when said victim is within the boundaries of the Reservation or Colony.
    - (2) Corroborated initial or intervening acts, used to establish a pattern of conduct for the purpose of probable cause under this Section, but which occurred outside the boundaries of the Reservation or Colony, may be used to establish and corroborate said stalking conduct for prosecution of a violation under this Section. However, individual initial or intervening acts occurring outside the

boundaries of Reservation or Colony are not prosecutable as separate offenses under this Section.

- (3) The present incarceration of the person making the threat shall not bar prosecution under this Section.

[Added FBC Res. No. 19-F-080 on July 23, 2019.]

**5-30-060 Domestic Violence Code (Rescinded)**

[Rescinded by FBC Res. No. 19-F-061 on April 9, 2019 based on Adoption of Title 13 – Domestic Violence.]

**5-30-070 Pandering and Sex Trafficking: Definitions; Penalties; Exception.**

- (a) A person who without physical force or the immediate threat of physical force, induces an adult to unlawfully become a prostitute or to continue to engage in prostitution, or to enter any place within the Tribe's jurisdiction in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution is guilty of pandering. Pandering is a Class A offense. This subsection does not apply to the customer of a prostitute.
- (b) A person:
- (1) Is guilty of sex trafficking if the person:
- (i) Induces, causes, recruits, harbors, transports, provides, obtains or maintains a child to engage in prostitution, or to enter any place within the Tribe's jurisdiction in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution;
- (ii) Induces, recruits, harbors, transports, provides, obtains or maintains a person by any means, knowing, or in reckless disregard of the fact, that threats, violence, force, intimidation, fraud, duress or coercion will be used to cause the person to engage in prostitution, or to enter any place within the Tribe's jurisdiction in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution;
- (iii) By threats, violence, force, intimidation, fraud, duress, coercion, by any device or scheme, or by abuse of any position of confidence or authority, or having legal charge, takes, places, harbors, induces, causes, compels or procures a person to engage in prostitution, or to enter any place within the Tribe's jurisdiction in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution; or
- (iv) Takes or detains a person with the intent to compel the person by force, violence, threats or duress to marry him her or any other person.
- (2) A person found guilty of sex trafficking is guilty of a Class A offense.
- (c) A court shall not grant probation to or suspend the sentence of a person convicted of sex trafficking.
- (d) Consent of a victim of pandering or sex trafficking to an act of prostitution is not a defense to a prosecution for any of the acts prohibited by this section.
- (e) In a prosecution for sex trafficking a child pursuant to Subsection (b), it is not a defense that the defendant did not have knowledge of the victim's age, nor is

reasonable mistake of age a valid defense to a prosecution conducted pursuant to Subsection (b).

## **5-40 OFFENSES AGAINST PROPERTY**

### **5-40-010 Arson and Reckless Burning**

- (a) Arson -
  - (1) A person is guilty of arson if he intentionally starts a fire or causes an explosion with the purpose of destroying a building or occupied structure of another. The term “occupied structure” includes but is not limited to, a boat, trailer, sleeping car, airplane, vehicle, building, structure, or place adopted for overnight accommodation of persons or for carrying on business, whether or not a person is actually present.
  - (2) A person is guilty of arson if he intentionally starts a fire or causes an explosion with the purpose of destroying or damaging his own property or the property of another, to collect the insurance for such loss.
  - (3) Arson is a Class A offense.
- (b) Reckless Burning -
  - (1) A person is guilty of reckless burning if the person recklessly starts a fire or causes an explosion that endangers human life or damages the property of another; or having started a fire, whether recklessly or not, and knowing that it is spreading and may endanger the life or property of another, fails to take reasonable measures to put out the fire or give a prompt alarm.
  - (2) Reckless burning is a Class A offense.

### **5-40-020 Criminal Mischief**

- (a) A person is guilty of criminal mischief if he:
  - (1) Damages or destroys his property with the intention of defrauding an insurer in circumstances not amounting to arson; or
  - (2) Intentionally or recklessly damages, defaces, or destroys the property of another person; or
  - (3) Intentionally or recklessly shoots or propels any object against a vehicle, airplane, boat, or train, whether moving or standing with the intent to cause damage.
- (b) Criminal mischief is a Class A offense, unless the person’s conduct causes a loss of less than \$500.00, in which case it is a Class C offense.

### **5-40-030 Burglary**

- (a) A person is guilty of burglary if he, either by day or night, enters or remains in any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, vehicle, vehicle trailer, semi-trailer, house-trailer, or railroad car with intent to commit a Class A offense, or an offense define in Section 5-40-060.
- (b) Commission of another crime while committing Burglary; Punishment – Every person who, in the commission of a burglary, shall commit any other crime, shall be punished

for that crime as well as for the burglary, and may be prosecuted for each crime separately.

- (c) Presumption of Intent – Every person who shall unlawfully break and enter or unlawfully enter any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, vehicle, vehicle trailer, semi-trailer, house-trailer, or railroad car shall be deemed to have broken and entered or entered the same with intent to commit a Class A offense, or offense defined in 5-04-060, therein, unless such unlawful breaking and entering or unlawful entry shall be explained by testimony satisfactory to the trier of fact to have been made without criminal intent.
- (d) Burglary is a Class A offense.

#### **5-40-040      Trespass**

- (a) A person is guilty of trespass if he intentionally or recklessly enters or remains on property, or knowingly allows his livestock to do so, when notice against entry is given by personal communication, by fencing or other enclosures, or by posting of signs. Trespass is a Class D offense.
- (b) A person is guilty of aggravated trespass if he knowingly or recklessly enters or remains on the property of another; and accomplishes such entry by an act of force or violence, or if he intends to cause or causes annoyance or injury to any person thereon, or if he intends to commit or commits another offense thereon. Aggravated trespass is a Class C offense.

#### **5-40-050      Robbery**

A person is guilty of robbery if the person intentionally takes the property of another by means of force, violence, or threat of injury. The threat of injury may be immediate or future, and may be directed toward the victim of the robbery, his property, or any other person in the victim's company at the time of the robbery. The victim must be present during the taking. The force, violence, or threat of injury must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking. The degree of force is immaterial. Robbery is a Class A offense.

#### **5-40-060      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 5-40-060 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.

#### **5-40-070      Forgery**

- (a) A person is guilty of forgery if, with the purpose of defrauding or injuring anyone, or with the knowledge that he is helping to defraud or injure anyone, he:
  - (1) Alters any writing of another without the other's authority;
  - (2) Signs any writing;
- (b) Forgery shall be punishable as follows:
  - (1) If the writing is in the amount \$1,000.00 or more, or the amount of damage caused by the fraud is \$1,000.00 or more, the offense shall be a Class A offense.
  - (2) If the writing is in the amount of \$200.00 or less than \$1,000.00, or the amount of the damage caused by the fraud is \$200.00 or more, but less than \$1,000.00, the offense shall be a Class B offense.
  - (3) If the writing is less than \$200.00 or the amount of damage caused by the fraud is less than \$200.00, or if no evidence as to the value is presented and the value is not obvious without presentation of such evidence, the offense shall be a Class C offense.

#### **5-40-080 Criminal Simulation**

A person is guilty of criminal simulation if, with the intent of defrauding or injuring anyone, or with the knowledge that the person is helping to defraud or injure anyone, he makes, alters, attempts to circulate or sell as genuine, or circulates or sells as genuine, any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess. Criminal simulation is a Class C offense.

#### **5-40-090 Tampering with Records or Other Documents**

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

#### **5-40-100 Deceptive Business Practices**

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

#### **5-40-110 Rigging a Contest**

A person is guilty of rigging a contest if the person intentionally engages in conduct that will prevent a publicly exhibited contest from being conducted in accordance with the rules and usage purported to govern it. Rigging a contest is a Class C offense.

#### **5-40-120 Defrauding Creditors**

- (a) A person is guilty of defrauding creditors if he:
  - (1) Destroys, removes, conceals, encumbers, or otherwise transfers property with the intention of hindering enforcement of a security interest;
  - (2) Intentionally falsifies any writing or record relating to the property; or
  - (3) Intentionally misrepresents or refuses to disclose the amount or location of property to a person entitled to administer said property.
- (b) Defrauding creditors is a Class C offense.

#### **5-40-130 Identity Theft**

- (a) Except as otherwise provided in Subsection (b), a person is guilty of identity theft who knowingly:
  - (1) Obtains any personal identifying information of another person; and

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

#### **5-40-140 Child Pornography**

- (a) A person is guilty of child pornography if the person knowingly and willfully has in his or her possession for any purpose any film, photograph or other visual presentation depicting a person under the age of 16 years as the subject of a sexual portrayal or engaging in or simulating, or assisting others to engage in or simulate, sexual conduct.
- (b) Child pornography is a Class A offense.

### **5-50 OFFENSES AGAINST THE FAMILY**

#### **5-50-010 Criminal Non-support**

- (a) A person is guilty of criminal non-support if he intentionally fails to provide for the support of the person's spouse, children under eighteen (18), or other dependents when they are in need of such support, the person has legal obligation to provide such support, and the amount has remained unpaid for a period longer than six months or is greater than \$2,000.
- (b) Criminal non-support is a Class B offense.



- (c) It shall be a mitigation consideration under this section that the defendant lacks the financial resources to support his dependents due to unemployment, ill health, or other similar reasons.

**5-50-020 Criminal Child Abuse**

- (a) A person is guilty of criminal child abuse if he causes non-accidental physical or mental injury to a person under eighteen (18) who is in his care. Injury shall include any form of sexual abuse not covered elsewhere in this Title.
- (b) Criminal child abuse is a Class A offense.
- (c) Justification, as described in Section 5-80-050 is a defense to a prosecution under this Section 5-50-020.

**5-50-025 Unlawful Contact with Child or Person with Mental Illness.**

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

[Added October 10, 2019 by Resolution No. 19-F-190.]

### **5-50-030 Criminal Child Neglect**

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

### **5-50-040 Failure to Report Child Abuse or Neglect**

- (a) A person is guilty of failure to report child abuse or neglect if in the course of his employment as a mandatory reporter as stated below in Subsection (b), he intentionally or recklessly fails to report any instance of possible child abuse or neglect to a Tribal Police Officer or the Tribe's Social Services Department within a reasonable time, but not more than 24 hours. Failure to report child abuse or neglect is a Class C offense.
- (b) Mandatory Reporters: An individual in the following positions is required to report child abuse or neglect as required by Subsection (a):
  - (1) Licensed medical provider, including but not limited to physician, physician assistant, nurse, dentist, physical therapist, chiropractor, podiatrist, optometrist, pharmacist, audiologist, psychologist, etc.
  - (2) Employees of a medical facility who are engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of such a medical facility upon notification of suspected abuse or neglect of a child by a member of the staff of the medical facility.
  - (3) Coroner.
  - (4) A member of the clergy, or religious healer, unless the person has acquired the knowledge of the abuse or neglect from the offender during a confession.
  - (5) Social worker.
  - (6) Marriage and family therapist, and clinical professional counselors.
  - (7) Alcohol, drug and family counselors.
  - (8) Any person licensed to conduct a foster home.
  - (9) A person working in a school who is licensed or endorsed pursuant to applicable law.
  - (10) Child care provider, including any person who maintains or is employed by a facility or establishment that provides care for children, children's camp or other public or private facility, institution or agency furnishing care to a child.
  - (11) Any officer or employee of a law enforcement agency or an adult or juvenile probation officer.
  - (12) Except as otherwise provided by applicable law or ethical rules, an attorney.
  - (13) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding abuse or neglect of a child and refers them to persons and agencies where their requests and needs can be met.
  - (14) Any person who is employed by a youth shelter.
  - (15) Any adult person who is employed by an entity that provides organized activities for children.
  - (16) The members of the Fallon Business Council.

**5-50-050 Elder and Vulnerable Adult Abuse**

- (a) A person is guilty of elder or vulnerable adult abuse if the person (1) intentionally inflicts physical injury or pain, sexual abuse, mental anguish, unreasonable confinement, or intimidation on an elder or vulnerable adult, or (2) the willful deprivation to an elder or vulnerable adult by a court appointed guardian or a Caretaker of the basic necessities of life, such as but not limited to food, shelter, clothing, medical and personal care that are necessary to avoid physical harm, mental anguish or mental illness, or any other type of maltreatment.
  - (b) No person shall be deemed to be abused for the sole reason they are being furnished nonmedical remedial treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment.
  - (c) Elder and Vulnerable Adult Abuse is a Class A offense.
  - (d) The definitions provided in Section 11-10-030 apply to this section.
- [Added October 10, 2019 by Resolution No. 19-F-190.]

**5-50-060 Failure to Report Elder or Vulnerable Adult Abuse or Neglect**

- (a) A person is guilty of failure to report elder or vulnerable adult abuse or neglect if in the course of the person's employment as a mandatory reporter as stated below in Subsection (b), the person intentionally or recklessly fails to report any instance of possible elder or vulnerable adult abuse or neglect to a Tribal Police Officer or the Tribe's Youth and Family Services within a reasonable time, but not more than 24 hours. Failure to report elder or vulnerable adult abuse or neglect is a Class C offense.
- (b) Mandatory Reporters: An individual in the following positions is required to report elder or vulnerable adult abuse or neglect as required by Subsection (a):
  - (1) The elder's or vulnerable adult's court appointed guardian or caretaker;
  - (2) Licensed medical provider, including but not limited to physician, physician assistant, nurse, dentist, physical therapist, chiropractor, podiatrist, optometrist, pharmacist, audiologist, psychologist, etc.;
  - (3) Employees of a medical facility who are engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of such a medical facility upon notification of suspected abuse or neglect of an elder or vulnerable adult by a member of the staff of the medical facility;
  - (4) Coroner;
  - (5) A member of the clergy, or religious healer, unless the person has acquired the knowledge of the abuse or neglect from the offender during a confession;
  - (6) Social worker;
  - (7) Marriage and family therapist, and clinical professional counselors;
  - (8) Alcohol, drug and family counselors;
  - (9) Any officer or employee of a law enforcement agency or a probation officer;
  - (10) An attorney, except as otherwise provided by applicable law or ethical rules;
  - (11) The members of the Fallon Business Council;
  - (12) Any person or agency, including employees, with fiduciary duties to elders or vulnerable adults such as attorneys, accountants, property managers or financial institutions; and
  - (13) Any Tribal employees who are mandatory reporters as stated in their job descriptions.

- (c) The definitions provided in Section 11-10-030 apply to this section.  
[Added October 10, 2019 by Resolution No. 19-F-190.]

**5-60 OFFENSES AGAINST THE ADMINISTRATION OF GOVERNMENT**

**5-60-010 Bribery**

- (a) A person is guilty of bribery if he offers, gives or agrees to give another, or solicits, accepts or agrees to accept from another, any money or other benefit as compensation for the recipient's decision, opinion, vote, or other exercise of discretion.
- (b) Bribery is a Class A offense.

**5-60-020 Improper Influence in Official Matter**

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

**5-60-030 Official Misconduct**

- (a) A person is guilty of official misconduct if, as a tribal official, or employee, he intentionally commits an unauthorized act which purports to be an act of his office or intentionally refrains from performing a nondiscretionary duty imposed on him by law, for the purpose of benefiting himself or others.
- (b) A person is guilty of official misconduct if, being a Tribal official or employee charged with the receipt, safekeeping, transfer or disbursement of public money, he appropriates the money or any portion thereof to his own use or the use of another or otherwise handles public money in a manner not authorized by law or the duties of his employment.
- (c) Official misconduct is a Class A offense.

**5-60-040 Unofficial Misconduct**

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

**5-60-050 Perjury**

- (a) A person is guilty of perjury if, in any official proceeding, he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement could affect the outcome of the proceeding, and the person knew the statement to be false at the time it was made. Perjury is a Class A offense.
- (b) No person shall be convicted of an offense under Subsection (a) above, where proof of falsity rests solely upon contradiction by the testimony of a single person other than the defendant.

**5-60-060 Making False Reports**

- (a) A person is guilty of making false reports if he intentionally:
  - (1) Gives false information to a law enforcement officer with the intention of misleading such officer in the performance of his official function;
  - (2) Makes a false statement not under oath, or swears, or affirms the truth of such a statement previously made, when the falsification was intended to mislead a public official, or occurred in an official proceeding; or
  - (3) Causes a false fire alarm or other emergency alarm to be transmitted to or within any organization, public or private, for dealing with emergencies involving a risk of physical harm to persons or property. This subsection does not apply to any person conducting an authorized fire or emergency drill.
- (b) False reports is a Class C offense.

**5-60-070 Interfering With the Judicial Process**

- (a) A person is guilty of interfering with the judicial process if he attempts to induce or otherwise cause another person to testify falsely or to withhold information, testimony, documents or things from the Tribal Court.
- (b) A person is guilty of interfering with the judicial process if he harms another person in retaliation for anything done by the other person in his capacity as a court officer, court employee, witness, or informant.
- (c) A person is guilty of interfering with the judicial process if he solicits, accepts or agrees to accept any benefit in consideration for his doing any of the things specified in this Section 5-60-070.
- (d) A person is guilty of interfering with the judicial process if he alters, destroys, or conceals any record, document or thing with the purpose of impairing its availability as evidence, or presents any record, document, or thing knowing it to be false with the intent of misleading the Tribal Court.
- (e) Interfering with the judicial process is a Class A offense.

**5-60-080 Interfering with the Governmental Process**

- (a) A person is guilty of interfering with the governmental process if he intentionally:
  - (1) Makes a false entry in, or false alteration of, any record, document or book kept by the Tribe;
  - (2) Makes, presents, or uses any false record, document or thing with the purpose that it be taken as genuine; or

- (3) Destroys, conceals, or removes any record, document, or thing belonging to the Tribe without proper authorization to do so.
- (b) A person is guilty of interfering with the governmental process if he uses force, violence, or intimidation with the intent to interfere with a public servant performing an official function.
- (c) Interfering with the governmental process is a Class A offense.

**5-60-090 Interfering with Law Enforcement Procedures**

- (a) A person is guilty of interfering with law enforcement procedures if he:
  - (1) Resists arrest by any means that create a risk of bodily harm to anyone;
  - (2) Intentionally interferes with the apprehension or prosecution of another by harboring or concealing the other, or by providing weapons or transportation or other means of escape; or
  - (3) Intentionally obstructs a law enforcement officer in the performance of his official duties through threats of violence, violence or force; or
  - (4) Refuses or knowingly fails to obey a lawful order, such as an order to disperse or leave the immediate vicinity, given by a Law Enforcement Officer or other public servant performing a law enforcement function at the scene of an accident or fire, or given in the course of executing or enforcing a law, or given in the course of a criminal investigation.
- (b) A person is guilty of interfering with law enforcement procedures if he removes himself from official detention.
- (c)
  - (1) A Tribal police officer or other law enforcement officer providing law enforcement services on the Tribe's behalf may detain for a reasonable time any person whom the officer encounters under circumstances that reasonably indicate that the person has committed, is committing or is about to commit a crime.
  - (2) A Tribal police officer or other law enforcement officer providing law enforcement services on the Tribe's behalf may detain any person the officer encounters under circumstances which reasonably indicate that the person has violated or is violating the conditions of the person's parole or probation.
  - (3) The Tribal police officer or other law enforcement officer providing law enforcement services on the Tribe's behalf may detain the person pursuant to this section only to ascertain the person's identity and the suspicious circumstances surrounding the person's presence abroad. Any person so detained shall identify himself or herself and provide any government issued identification in the person's possession, but may not be compelled to answer any other inquiry of any law enforcement officer.
  - (4) A person must not be detained longer than is reasonably necessary to effect the purposes of this section, and in no event longer than 60 minutes. The detention must not extend beyond the place or the immediate vicinity of the place where the detention was first effected, unless the person is arrested.
- (d) Interfering with law enforcement procedures under Subsections (a)(1), (a)(2) or (b) is a Class A offense. Interfering with law enforcement procedures under Subsections (a)(3) or (a)(4) is a Class C offense. Interfering with law enforcement procedures under Subsection (c) is a Class D offense.

**5-60-095 Police Service Animals – Causing Injury or Interfering with Handler; Penalties.**

- (a) As used in this section:
  - (1) "Handler" means a law enforcement officer who is specially trained, and uses a police service animal during the course of the performance of his law enforcement duties.
  - (2) "Police service animal" means any dog or horse used by a law enforcement agency, which is specially trained for law enforcement work, or any animal contracted to assist a law enforcement agency in the performance of law enforcement duties.
- (b) It is a Class A offense for a person to intentionally:
  - (1) cause bodily injury or death to a police service animal;
  - (2) engage in conduct likely to cause bodily injury or death to a police service animal;
  - (3) lay out, place, or administer any poison, trap, substance, or object which is likely to produce bodily injury or death to a police service animal; or
  - (4) offer or agree with one or more persons to engage in or cause the performance of an act which constitutes a violation of this section.
- (c) It is a Class B offense for a person to intentionally or knowingly:
  - (1) taunt, torment, strike, or otherwise assault a police service animal;
  - (2) throw any object or substance at, or in the path of, a police service animal;
  - (3) interfere with or obstruct a police service animal, or attempt to, or interfere with the handler of the animal in a manner that inhibits, restricts, or deprives the handler of his control of the animal;
  - (4) release a police service animal from its area of control, such as a vehicle, kennel, or pen, or trespass in that area; or
  - (5) place any food, object, or substance into a police service animal's area of control without the permission of the handler.
- (d) A police service animal is exempt from quarantine or other animal control ordinances if it bites any person while under proper police supervision or routine veterinary care. The law enforcement agency and the animal's handler shall make the animal available for examination at any reasonable time and shall notify the local health officer if the animal exhibits any abnormal behavior.
- (e) In addition to any other penalty, a person convicted of a violation of this section is liable for restitution to the owning or employing law enforcement agency or individual owner of the police service animal for the replacement, training, and veterinary costs incurred as a result of the violation of this section.

**5-60-100 Doing Business without a License**

A person is guilty of doing business without a license if he commences or carries on any business, trade, profession, or calling which is required by Tribal law to be licensed, without having an appropriate license. Doing business without a license is a Class E offense.



#### **5-60-110 Tampering With or Destroying Public Property**

A person is guilty of tampering with or destroying public property if he intentionally injures or destroys any book, record, document, building, marker, or any other tangible property, real or personal, which belongs to the Tribe. Tampering with or destroying public property is a Class A offense.

#### **5-60-120 Failure to Obey a Lawful Order of the Court; Contempt**

- (a) A person is guilty of failure to obey a lawful order of the Tribal Court if he intentionally, and without a good reason, fails to obey an order, subpoena, warrant, or command duly made, issued, or given by the Tribal Court, or otherwise issued according by law.
- (b) This Section 5-60-120 does not apply to a failure to appear as a party in a civil action where default or similar remedy is available to the other party.
- (c) Failure to obey a lawful order of the Tribal Court is a Class E offense.

#### **5-60-130 Neglect of Duty**

All Tribal police officers shall be vigilant in carrying out the provisions of this Title 5 with respect to Class A and Class B offenses into full force and effect. Any police officer who shall neglect his duty by failing to take appropriate action against a person who commits a Class A or B offense in his presence, shall be guilty of a Class C offense. If it is unclear whether a Class A or B offense has been committed, the officer shall have a reasonable time to conduct an investigation before making an arrest.

#### **5-60-140 Disturbing a Meeting**

Any person who, without authority of law, shall willfully disturb any official Tribal assembly or meeting, shall be guilty of the offense of disturbing a meeting. A violation of this Section shall result in punishment for a Class D offense.

#### **5-60-150 Interference with Public Utility**

- (a) A person is guilty of interference with a public utility if:
  - (1) he interferes with the proper operation of or damages any of the components of the public utility system, including the Distribution System Lines and Public Utilities (as defined in Title 18);
  - (2) he climbs on or in any manner interferes with any building, reservoir, well(s), water tower(s), or drinking water system or sewer system structure belonging to the Fallon Paiute-Shoshone Tribe without being authorized to do so by the proper authority of the Fallon Business Council or Public Works Department, or in an emergency situation authorization is approved by the Public Works Department or Tribal Police Department;
  - (3) he in any manner injures or defaces any such structures; or
  - (4) he takes water that originates from the Distribution System Lines (as defined in Title 18) or a water well or other water source owned by the Fallon Paiute-Shoshone Tribe without being authorized to do so by the proper authority of the Fallon Business Council or Public Works Department, or in an emergency situation authorization is approved by the Public Works Department or Tribal Police Department.

- (b) A violation of this Section shall result in punishment for a Class B offense.  
(Added by Resolution No. 20-F-064 on April 28, 2020.)

## **5-70 OFFENSES AGAINST PUBLIC ORDER AND DECENCY**

### **5-70-010 Disorderly Conduct**

- (a) Every person who shall maliciously and willfully disturb the peace or quiet of any neighborhood or person or family by loud or unusual noises, or by tumultuous and offensive conduct, threatening, traducing, quarreling, challenging to fight, or fighting, or otherwise breaches the peace, shall be guilty of a Class C offense.(b) Disorderly Conduct is a Class C offense.

### **5-70-015 Public Intoxication**

- (a) Any person appearing in a public or private place other than their own home or place of business apparently under the influence of intoxicating liquor in such a condition that he is unable to exercise care for his own safety or the safety of others shall be deemed guilty of public intoxication.
- (b) A first offense for public intoxication is a Class D offense. As an alternative sentence, the Tribal Court may order said person on the first offense to attend a rehabilitation program.
- (c) Upon conviction of a second offense for public intoxication within a one year period, the person shall be sentenced for a Class D offense.
- (d) Upon conviction of a three or more offenses for public intoxication within a three year period, the person shall be sentenced for a Class C offense

### **5-70-020 Misuse of Communications Device**

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

### **5-70-030 Desecration**

A person is guilty of desecration if he purposely desecrates any public monument, structure, place of worship, cemetery, gravesite, or cultural site. Desecrate means defacing, damaging, polluting, or otherwise physically mistreating one of the above things in a way that the person knows or believes will outrage the sensibilities of the persons likely to observe or discover his action. Desecration is a Class A offense.

### **5-70-040 Violation of Privacy**

- (a) A person is guilty of violation of privacy if, except as authorized by law, he:
- (1) Trespasses on property with intent to subject anyone to eavesdropping or other surveillance in a private place;
  - (2) Installs any device for observing, photographing, recording, or eavesdropping in or outside of any private place, or a public place where a person has a reasonable expectation of privacy, without the consent of the person or persons who have a reasonable expectation of privacy there; or

- (3) Intercepts a message by telephone, letter, or other communication without the consent of the sender or the receiver.
- (b) Violation of privacy is a Class C offense.

**5-70-050 Weapons Offenses**

- (a) “Firearm” defined - As used in this Section, “firearm” means any weapon from which a projectile may be propelled by means of an explosive.
- (b) Setting spring gun or other deadly weapon: unlawful and permitted uses.
  - (1) Every person who sets a so-called trap, such as a spring pistol, rifle, or other deadly weapon shall be punished:
    - (a) If no injury results therefrom to any human being, for a Class C offense.
    - (b) If injuries not fatal result therefrom to any human being, for a Class B offense.
    - (c) If the death of a human being results therefrom, under circumstances not rendering the act murder, for a Class A offense.
  - (2) Subsection 1 does not prevent the use of any loaded spring gun, set gun or other device for the destruction of gophers, moles, coyotes or other burrowing rodents or predatory animals by agents or employees of governmental agencies engaged in cooperative predatory animal and rodent control work, but:
    - (a) A loaded spring gun, set gun or other device must not be set within one (1) mile of any residence.
    - (b) Before setting any such loaded spring gun, set gun or other device on any real property, permission must first be obtained from the owner, lessee or administrator thereof.
- (c) Unlawful possession, manufacture, disposition of explosive or incendiary device -
  - (1) Any person who unlawfully possesses, manufactures, or disposes of any explosive or incendiary device with intent to destroy life or property shall be punished for a Class A offense.
  - (2) For the purposes of this section:
    - (a) “Dispose of” means give, give away, loan, offer, offer for sale, sell or transfer.
    - (b) “Explosive or incendiary device” means any explosive or incendiary material or substance that has been constructed, altered, packaged or arranged in such a manner that its intended use would cause destruction or injury to life or property.
  - (3) Subsection 1 does not prohibit the manufacture, use, possession or disposal of any material, substance or device by those persons engaged in mining or any other lawful activity or who are authorized by governmental agencies, which have lawful control over such matters, to use such items in the performance of their duties.
- (d) Destruction of building by explosives: punishment of conspirators -
  - (1) Every person who destroys, or attempts to destroy, with dynamite, nitroglycerine, gunpowder or other high explosive, any dwelling house or other building, knowing or having reason to believe that a human being is therein at the time, shall be punished for a Class A offense.

- (2) Any person or persons who conspire with others to commit the offense described in Subsection 1 shall be punished in the same manner.
- (e) Unlawful possession, manufacture, disposition of short-barreled rifle, short-barreled shotgun: penalty; exceptions.
  - (1) Any person who unlawfully possesses, manufactures or disposes of any short-barreled rifle or short barreled shotgun shall be punished for a Class A offense.
  - (2) For purposes of this section:
    - (a) “Short-barreled rifle” means:
      - (1) A rifle having one or more barrels less than 16 inches in length, or
      - (2) Any weapon made from a rifle, whether by alteration, modification or other means, with an overall length of less than 26 inches.
    - (b) “Short-barreled shotgun” means:
      - (1) A shotgun having one or more barrels less than 18 inches in length; or
      - (2) Any weapon made from a shotgun, whether by alteration, modification or other means, with an overall length of less than 26 inches.
  - (3) This section does not prohibit:
    - (a) The possession or use of any short-barreled rifle or short-barreled shotgun by any police officer when authorized to do so in the performance of official duties; or
    - (b) The possession of any short-barreled shotgun by any person who is licensed as a firearms importer, manufacturer or dealer by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).
- (f) Changing, altering, removing, obliterating serial number of firearm unlawful -
  - (1) It is unlawful for any person to change, alter, remove or obliterate the serial number upon any firearm. Possession of any firearm upon which the serial number has been changed, altered, removed or obliterated is prima facie evidence that the possessor has changed, altered, removed or obliterated the serial number.
  - (2) Any person who violates the provisions of Subsection 1 is guilty of a Class B offense.
- (g) Discharging firearm in or upon public streets, places of public resort; throwing deadly missiles— Any person, whether under the influence of liquor or otherwise, who shall maliciously, wantonly or negligently discharge or cause to be discharged any firearm or gas, spring or air gun, in or upon any public street or thoroughfare, or in the theatre, hall, store, hotel, saloon or any other public place, or in any place where any person might be endangered thereby, although no injury result, shall be guilty of a Class B offense.
- (h) Discharging firearm at or into structure, vehicle, aircraft or watercraft. Any person who willfully and maliciously discharges a firearm, or a gas, spring or air gun, at or into any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, aircraft, vehicle, vehicle trailer, semi-trailer or house trailer, railroad locomotive, car or tender, shall be punished:
  - (1) If it has been abandoned, for a Class C offense.
  - (2) Otherwise, as a Class A offense.

- (i) Aiming firearm at human being; discharging weapon where person might be endangered. Every person who shall aim any gun, pistol, revolver or other firearm, whether loaded or not at or toward any human being, or who shall willfully discharge any firearm, air gun or other weapon, or throw any deadly missile in a public place, or in any place where any person might be endangered thereby, although no injury result, shall be guilty of a Class B offense.
- (j) Use of firearms by minor under 14 years -
  - (1) No minor under the age of 14 shall handle or have in his possession or under his control, except while accompanied by or under the immediate charge of an adult person, any firearm of any kind for hunting or target practice or for other purposes.
  - (2) Every person violating any of the provisions of Subsection 1, or aiding or knowingly permitting any such minor to violate the same, shall be guilty of a Class C offense.
- (k) Sale of certain firearms to minors unlawful -
  - (1) Any person within the jurisdiction of the Fallon Paiute-Shoshone Tribes who sells, or barter to another under the age of 18 years either a pistol, revolver or a firearm capable of being concealed upon the person shall be guilty of a Class C offense.
  - (2) The term “firearm capable of being concealed upon the person” as used in this section applies to and includes all firearms having a barrel less than 12 inches in length.
- (l) Drawing deadly weapon in threatening manner -
  - (1) Any person having, carrying or procuring from another any dirk, dirk-knife, sword, sword-cane, pistol, gun or other deadly weapon, who shall draw or exhibit any of such deadly weapons in a rude, angry or threatening manner not in necessary self-defense, or who shall in any manner unlawfully use the same in any fight or quarrel, shall be guilty of a Class C offense.
  - (2) No police officer shall be held to answer, under the provisions of this Subsection 1, for drawing or exhibiting any of the weapons mentioned therein while in the lawful discharge of his duties.
- (m) Confiscation of dangerous weapons by Tribal Police; retention by or private sale to Law Enforcement officers, agencies -
  - (1) When any one or more of the instruments or weapons described in this Section 5-70-050 are taken from the possession of any person charged with the commission of any public offense or crime, such instrument or weapons shall be surrendered to the Tribal Police.
  - (2) Except as provided in Subsection 5, the Fallon Business Council shall at least once a year order the officer to whom any such instrument or weapon is surrendered pursuant to Subsection 1 to:
    - (a) Retain any such confiscated instrument or weapon for use by the Tribal Police.
    - (b) Sell any such confiscated instrument or weapon to another law enforcement agency through a licensed dealer at a price not less than its prevailing market value.
    - (c) Sell any such confiscated instrument or weapon to a licensed dealer at prevailing market value.

- (d) Destroy or have destroyed any instrument or weapon that cannot be legally sold.
- (3) All proceeds of the sales provided for in Subsection 2 shall be deposited with the Tribal Treasurer.
- (4) Any officer receiving an order as provided in Subsection 2 shall comply with such order as soon as practicable.
- (5) The officer to whom any such confiscated instrument or weapon is surrendered shall:
  - (a) Destroy or direct to be destroyed such instrument or weapon which is determined to be dangerous to the safety of the public.
  - (b) Return any instrument or weapon, which has not been destroyed pursuant to paragraph (a), upon demand to the person from whom such instrument or weapon was confiscated if such person is acquitted of the public offense or crime of which he was charged.
  - (c) Retain such confiscated instrument or weapon held by him pursuant to an order of a Tribal Judge or by direction of the Tribal Prosecutor upon a finding that such retention is necessary for purposes of evidence, until such order or direction is rescinded.
- (n) Manufacture, importation of dangerous weapons; carrying concealed weapon without permit; permits issued by Tribal Police; penalties -
  - (1) It is unlawful for any person within this Tribe's jurisdiction to:
    - (a) Manufacture or cause to be manufactured, or import into the Tribe's territory, or keep, offer or expose for sale, or give, lend or possess any instrument or weapon of the kind commonly known as a switchblade knife, blackjack, billy club, sand-club, sand-bag or metal knuckles; or
    - (b) Carry concealed upon his person:
      - (1) Any explosive substance, other than fixed ammunition;
      - (2) Any dirk, dagger or dangerous knife; or
      - (3) Any pistol, revolver or other firearm, or dangerous or deadly weapon.
  - (2) Except as otherwise provided in this Section, any person who violates any of the provisions of Subsection 1 is guilty:
    - (a) For the first offense, of a Class B offense.
    - (b) For any subsequent offense, of a Class A offense.
  - (3) The provisions of Subsection 1 do not apply to:
    - (a) Tribal police officers, sheriffs, deputies, constables, marshals, peace officers, special police officers, policemen, whether active or honorably retired, other duly appointed police officers or persons having permission from the Tribal Chief of Police as provided in Subsection 4.
    - (b) Any person summoned by any police officer to assist in making arrests or preserving the peace while the person so summoned is actually engaged in assisting such officer.
    - (c) Members of the Armed Forces of the United States when on duty.
  - (4) The Tribal Chief of Police may upon written application by a resident within the Tribe's jurisdiction showing the reason or the purpose for which the concealed weapon is to be carried, grant permission to the applicant, authorizing a person to carry, in the Tribe's jurisdiction, the concealed weapon described in the

- permit. However this provision does not create in any person an enforceable right to obtain permission from the Tribal Chief of Police to carry a concealed weapon. No permit may be granted to any person to carry a switchblade knife.
- (5) Any person with a valid State issued concealed carry permit
    - (a) Will be required to show the permit upon request by a police officer; and
    - (b) Who is stopped by a police officer while armed must notify the officer that they have a concealed carry permit and are armed.
  - (6) For purposes of this Section, “switchblade” having the appearance of a pocket knife, any blade of which is 2 or more inches long and which can be released automatically by a flick of a button or other device in the handle of the knife.
  - (o) Alien, ex-felon not to possess firearm; penalty -
    - (1) No person prohibited from possessing a firearm under Federal law or the laws of the State of Nevada shall have in his possession or under his custody or control any firearm.
    - (2) Any person who violates the provisions of this section shall be punished for a Class A offense.
    - (3) Nothing in this Subsection (o) applies to or effects:
      - (a) Tribal Police Officers, Sheriffs, Constables, Marshals, Policemen, whether active or honorably retired, or other duly appointed Police Officers.
      - (b) Any person summoned by any such officers to assist in making arrests or preserving the peace while the person so summoned is actually engaged in assisting such officer.
      - (c) Members of the Armed Forces of the United States when on duty.
  - (p) It shall not be a crime under any provision in this section to engage in airsoft or paintgun recreational activity.
  - (q) No person, including a person with a concealed carry permit, may carry or possess any firearm or other prohibited weapon in any building where such possession is prohibited by applicable law or ordinance, or by any conspicuously placed notice. This subsection shall not apply to any law enforcement officer, or any person excepted from this subsection by the Tribe’s Chief of Police.

[Revised October 10, 2019 by Resolution No. 19-F-190.]

## **5-70-060 Criminal Nuisance**

- (a) A person is guilty of criminal nuisance if:
  - (1) He recklessly interferes with or alters the flow of water in a stream, river, ditch, canal or lateral;
  - (2) He recklessly breaks, injures, alters or destroys any bridge, dam, canal, flume, or other structure for the control of water without lawful authority to do so;
  - (3) He negligently causes or allows any substance harmful or potentially harmful to persons, animals, or plants to enter into a source of water used for drinking or other domestic or farm purposes; or
  - (4) He recklessly obstructs or tends to obstruct any lake, stream, canal, road, public park, or highway.
- (b) A person is guilty of criminal nuisance if he:



- (1) keeps wrecked or junked cars, appliances or implements, or unreasonable quantities of trash or garbage on his property, in public view, or
  - (2) keeps animals that cause unreasonable disturbances in the community due to noise or smell,

and fails to remove them when requested in writing to do so by the Fallon Business Council or the Tribe's Chief of Police.
- (c) Criminal nuisance under Subsection (a) is a Class C offense. Criminal nuisance under Subsection (b) is a Class E offense. If a person is convicted of criminal nuisance under Subsection (b) more than once in a two year period, the second and any subsequent convictions shall be a Class D offense.

**5-70-065 Purchase, Consumption or Possession of Alcoholic Beverage by Person Under 21; Penalties; Exceptions.**

- (a) Except as otherwise provided in this section, a person under 21 years of age who, for any reason, possesses any alcoholic beverage in public is guilty of a Class D offense; or if the person is under 18 years of age then the person shall be subject to disposition pursuant to Title 9, Section 9-60-010 of the Law and Order Code.
- (b) A person under 21 years of age is not subject to the criminal penalty set forth in subsection (a) if the person requests emergency medical assistance for another person whom he or she reasonably believes is under 21 years of age if the person making the request:
  - (1) Reasonably believes that the person who consumed the alcohol is in need of such assistance because of the alcohol or other drug consumption;
  - (2) Is the first person to request emergency medical assistance for the person;
  - (3) Remains with the person until informed that his or her presence is no longer necessary by the emergency medical personnel who respond to the request for assistance for the person; and
  - (4) Cooperates with any provider of emergency medical assistance, any other health care provider who assists the person who may be in need of emergency medical assistance because of alcohol consumption and any law enforcement officer.
- (c) A person under 21 years of age for whom another person requests emergency medical assistance pursuant to subsection (b) is not subject to the criminal penalty set forth in subsection (a).
- (d) A person under 21 years of age is not subject to the criminal penalty set forth in subsection (a) if the person:
  - (1) Requests emergency medical assistance because he or she reasonably believes that he or she is in need of medical assistance because of alcohol or other consumption; and
  - (2) Cooperates with any provider of emergency medical assistance, any other health care provider who provides assistance to him or her and any law enforcement officer.
- (e) For the purposes of this section, possession "in public" includes possession:
  - (1) On any public road, street, thoroughfare or highway;
  - (2) In any place open to the public; and
  - (3) In any private business establishment which is in effect open to the public.
- (f) For the purposes of this section, possession "in public" does not include:

- (1) Possession for an established religious purpose;
- (2) Possession in accordance with a prescription issued by a person statutorily authorized to issue prescriptions; or
- (3) The selling, handling, serving or transporting of alcoholic beverages by a person in the course of his or her lawful employment by a licensed manufacturer, wholesaler or retailer of alcoholic beverages.

[Added October 10, 2019 by Resolution No. 19-F-190.]

#### **5-70-070 Contributing to the Delinquency of a Minor**

A person 18 years of age or over is guilty of contributing to the delinquency of a minor if he recklessly sells, gives, or otherwise makes beer, liquor, wine, or other alcoholic beverages available to a person under the age of 18 years; if he recklessly sells, gives or otherwise makes available to a person under the age of 18 years a controlled substance, as specified in Section 5-70-100, without a prescription from a doctor or other person licensed to prescribe medicine; or if he recklessly, by act omission, encourages, causes or contributes to the commission of any crime. Contributing to the delinquency of a minor is a Class A offense.

(Amended by Res. No. 09-F-024)

#### **5-70-080 Fireworks Offenses**

A person is guilty of a fireworks offense if he sells, distributes, transports, activates, ignites, or detonates any firecracker or other firework type device which is capable of or intended to explode, ignite, become self-propelled, give off any projectile, spark, or other ignited or fused object or manifestation, or in any way give off sound or light by virtue of its burning or exploding. However, it shall not be an offense under this section to use or ignite hand-held sparkler type devices in such a manner that they burn singly. It shall not be an offense to use or ignite fireworks at a patriotic, religious, or Tribal ceremony, gathering, or celebration in a safe manner, provided that a permit to do so has been obtained from the Fallon Business Council prior to the importation and use of such fireworks. A fireworks offense is a Class C offense.

#### **5-70-090 Littering**

A person is guilty of littering if he throws, dumps, places, or deposits upon the land of another, upon any Tribal or public property, upon any highway, street, road, or upon any other area not his own, without the consent of the owner or other lawful permission, any garbage, debris, junk, carcasses, trash, refuse, or other substance of any nature whatsoever which would mar the appearance or detract from the cleanliness of the area. Littering is a Class E offense. If a person is convicted of littering more than once in a 12 month period, the second and any subsequent convictions shall be a Class D offense.

#### **5-70-100 Misuse of Controlled or Hypnotic Substance**

- (a) (1) Except as allowed by applicable law or in compliance with a prescription from a doctor or other person licensed to prescribe medicine, any person found in possession or apparently under the influence of either a controlled substance or hypnotic substance as listed in schedules I, II, III, IV and V of 21 U.S.C. § 812 shall be deemed guilty and upon conviction shall be sentenced for a Class B offense. In the alternative for a first offense, the Tribal Court may order said person to attend and successfully complete a rehabilitation program.

- (2) Upon conviction for a second and third offense, a person shall be sentenced for a Class A offense with a minimum of thirty (30) days up to a maximum of one (1) year imprisonment and may be further punished by a fine of \$5,000.00.
- (3) Upon conviction for a fourth offense, said person shall be sentenced for a Class A offense with a minimum of one (1) year imprisonment and may be further punished by a fine of \$5,000.00.
- (4) This criminal sanction provided in this section does not apply to that plant of the Genus Laphorophora commonly known as “Peyote” when such drug is used as a sacrament in the religious rights of any bonafide religious organization.
- (b) (1) Any person who opens or maintains any place for the purpose of unlawfully selling, giving away or using any controlled substance, as defined as listed in Subsection (a), shall be punished by imprisonment for not more than 1 year, and may be further punished by a fine of not more than \$5,000, except as provided in Subsection 2.
- (2) If a person convicted of violating this section has previously been convicted of violating this section within the last ten years of the offense date the maximum sentence of 1 year and maximum fine of \$5,000 must both be imposed and that person is not eligible for parole, probation or a suspended sentence. The court shall not grant probation to or suspend the sentence of any person convicted of violating this Subsection if he has been previously convicted under this Subsection or of any other offense described in this Section.
- (3) This Subsection does not apply to any rehabilitation clinic established or licensed by the Indian Health Service or other appropriate agency. The criminal sanction provided in this Subsection does not apply to that plant of the Genus Laphorophora commonly known as Peyote when such drug is used as a sacrament in the religious rights of any bonafide religious organization.
- (c) (1) Except as allowed by applicable law or in compliance with a prescription from a doctor or other person licensed to prescribe medicine, it is unlawful for any person to import or transport a controlled or counterfeit substance as defined in Subsection (a) above, or to offer or attempt to do any such act.
- (2) All violations of this Subsection shall be punished as set out in Subsection (a) above.
- (d) (1) Except as allowed by applicable law, it is unlawful for any person to manufacture or compound a controlled or counterfeit substance as defined in Subsection (a) above, or to offer or attempt to do any such act.
- (2) All violations of this Subsection shall be punished as set out in Subsection (a) above.
- (e) (1) Except as allowed by applicable law, it is unlawful for any person to sell, exchange, barter, supply, prescribe, dispense, or administer a controlled or counterfeit substance as defined in Subsection (a) above, or to offer or attempt to do any such act.
- (2) All violations of this Subsection shall be punished for a Class A offense.
- (f) (1) Except as allowed by applicable law, it is unlawful for any person to give away a controlled or counterfeit substance as defined in Subsection (a) above, or to offer or attempt to do any such act.
- (2) All violations of this Subsection shall be punished for a Class A offense.

(Amended by Res. No. 96-F-090)

## **5-70-110 Abandoned Iceboxes and other Containers**

Any person who shall have on his premises any abandoned chest, icebox or other container not in active use, the attached door to which has a latch or lock which automatically fastens upon the door being closed and which cannot be readily opened from the inside, shall be guilty of a Class C offense.

## **5-70-120 Driving Under the Influence of Alcohol or Drugs**

- (a) Offense - No person who is under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor and any drug, or under the influence of any controlled substance listed in Schedules I, II, III, IV, or V of 21 U.S.C. § 812 or any successor legislation to the schedules, shall drive a vehicle upon any road.
- (b) Sentencing – A judgment by the Tribal Court that a person has violated this section shall result in sentencing as follows:
  - (1) First offense – punished as a Class C offense.
  - (2) Second offense – punished as a Class B offense.
  - (3) Third offense and offenses in excess of three – punished as a Class A offense.
- (c) Chemical Dependency Analysis – In addition to the above listed penalties, the defendant if convicted, shall be required to submit to a chemical dependency analysis and to enroll, participate and successfully complete any course or program as indicated by the evaluator.
- (d) Presumption - Alcohol
  - (1) If, at the time of an alleged offense, there was 0.08 percent or more by weight of alcohol in the accused blood, it shall be presumed that the accused was under the influence of intoxicating liquor at that time.
  - (2) The forgoing provision shall not be construed as limiting the introduction of any other relevant evidence bearing upon the question of whether the accused was under the influence of intoxicating liquor at the time of the alleged offense.
- (e) Presumption - Drugs
  - (1) It shall be presumed that the accused was under the influence of a controlled substance if at that time of an alleged offense the accused had a controlled substance in his/her blood or urine equal to or greater than:

Prohibited substance	Urine Nanograms per milliliter	Blood Nanograms per milliliter
(i) Amphetamine	500	100
(ii) Cocaine	150	50
(iii) Cocaine metabolite	150	50
(iv) Heroin	2,000	50
(v) Heroin metabolite:		
(1) Morphine	2,000	50
(2) 6-monoacetyl morphine	10	10
(vi) Lysergic acid diethylamide	25	10
(vii) Marijuana	10	2
(viii) Marijuana metabolite	15	5
(ix) Methamphetamine	500	100
(x) Phencyclidine	25	10

- (2) The forgoing provision shall not be construed as limiting the introduction of any other relevant evidence bearing upon the question of whether the accused was under the influence of drugs at the time of the alleged offense.
- (f) Implied Consent – Any driver who is operating a vehicle upon the Reservation or Colony shall be considered to have consented to a scientific test to determine blood alcohol level or applicable drug test when reasonably requested to do so by a police officer. If a driver refuses to submit to a blood alcohol test, his privilege to operate a vehicle upon the Reservation or Colony shall be suspended for a period of up to one (1) year.

#### **5-70-130 Driving Under the Influence of Non-Narcotic Drugs**

No person who is under the influence of any drug, other than a controlled substance as specified in Subsection (a) above, to a degree which renders him incapable of safely driving a vehicle, shall drive a vehicle upon any road. Violation of this Subsection shall result in punishment for a Class D offense.

#### **5-70-140 Reckless Driving**

Anyone who drives a vehicle upon a road in a manner so as to endanger any person or property shall be guilty of reckless driving. A first violation of this section shall result in punishment for a Class C offense. A second or more violation of this section shall result in a punishment of a Class B offense.

#### **5-70-150 Leaving the Scene of an Accident**

The driver of any vehicle involved in an accident resulting in injury to or death of any person, or damage to a vehicle or property, shall immediately stop as close as possible to the scene of the accident. A violation of this Section shall result in punishment for a Class B offense.

#### **5-70-160 Intentional removal or defacement of survey monument**

- (a) Except as otherwise provided in Subsection (b), a person who intentionally removes, changes or defaces any survey monument that has been properly established and marked by a professional land surveyor, is guilty of a Class D offense, and may be required to pay the cost of restoring or replacing the monuments which have been removed, changed or defaced.
- (b) This Section does not apply to a professional land surveyor when performing his duties as a professional land surveyor.

### **5-80 DEFENSES**

#### **5-80-010 Intoxication**

Intoxication is not a defense unless it negates the mental state required for the offense. When recklessness is an element of the offense, if the person, due to self-induced intoxication, is unaware of a risk of which he should have been aware had he been sober, such unawareness is not a defense. Intoxication which is not self-induced is a defense.

#### **5-80-020 Duress**

It is a defense that the person engaged in conduct charged to constitute an offense because he 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 person of reasonable firmness would have been unable to resist. It is no defense that a person acted on command of the person's spouse, unless the circumstances amount to duress as defined above. The defense or duress is unavailable where the conduct constituting the offense causes or threatens to cause death or serious bodily harm to some person other than the person.

#### **5-80-030 Consent**

The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negates an element of the offense. However, consent is not a defense if the bodily harm consented to or threatened by the offense is serious. Consent that is given by a person who, by reason of youth, mental disease or defect, or intoxication, is unable to make a reasonable judgment is not valid.

#### **5-80-040 Entrapment**

A law enforcement officer perpetrates an entrapment if 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 ready 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.

#### **5-80-050 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 a parent.

#### **5-80-060 Force in Defense of Persons**

- (a) A person is justified in threatening or using force against another person when and to the extent that he reasonably believes such force is necessary to defend himself or a third person against such other person's immediate use of unlawful force. However, a person is justified in using force which is intended or likely to cause death or serious bodily injury only if he reasonably believes that such force is necessary to prevent death or serious bodily injury to himself or a third person.
- (b) A person is not justified in using force under this section if he was the aggressor or was engaged in combat by consent, unless he has withdrawn from the encounter and effectively communicated his withdrawal to the other person.
- (c) A person is not justified in using force under this section if he initially provoked the use of force upon himself with the intent to use such force as an excuse to inflict harm upon another, or if he is attempting to commit, committing, or fleeing after the commission of an offense.

#### **5-80-070      Force in Arrest**

Any person is justified in using force, except force likely to cause death or serious bodily injury, to affect an arrest. A law enforcement officer may use force likely to cause death or serious bodily injury only if such force is necessary, and the person to be arrested is attempting to escape by use of a deadly weapon.

#### **5-80-080      Force in Defense of One's Dwelling**

A person is justified in using force against another person when and to the extent necessary to prevent or terminate the other person's entry into or attack upon his dwelling. However, he may use force likely to cause death or serious bodily injury only if the entry is made or attempted in a violent manner, and it reasonably appears that there may be violence to any person in the dwelling, or if he reasonably believes that the entry is made or attempted for the purpose of committing a Class A offense or other offense involving bodily injury.

#### **5-80-090      Force in Defense of Property**

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

#### **5-80-100      Defense of Insanity; Competency**

- (a) An act done by a person in a state of insanity cannot be punished as a public offense, nor can a person be tried, adjudged to punishment, or punished for a public offense while he is insane.
- (b) To determine a status of insanity:
  - (1) The Tribal Court shall appoint two physicians, at least one of whom is a psychiatrist or otherwise especially qualified, to examine the defendant.
  - (2) At a hearing in open court, the Judge shall receive the report of the examining physicians and shall permit counsel for both sides to examine them. The prosecution and the defendant may introduce other evidence and cross-examine one another's witnesses.
  - (3) The Tribal Court shall then make and enter its findings of sanity or insanity.
- (c) If the Tribal Court finds that the defendant is sane the trial shall proceed, or judgment may be pronounced, as the case may be.
- (d) If the Tribal Court finds the defendant insane, the Judge shall order the law enforcement officer to convey to him forthwith, together with a copy of the complaint the commitment and the physicians' certificate, if any, into the custody of a suitable treatment program. Proceedings against the defendant must be suspended until the psychiatrist in charge finds him capable of standing trial. The commitment of the defendant shall exonerate any bail he may have given, or shall entitle any person authorized to receive the property of the defendant to a return of any money he may have deposited instead of bail.

## **5-90 CLASSES OF OFFENSES AND SENTENCES**

### **5-90-010 Maximum Fine and Sentences of Imprisonment**

- (a) Punishments for Each Class of Offense - An Indian convicted of an offense may be sentenced as specified for the specific offense and as follows.
  - (1) If the offense is a Class A offense, to a term of imprisonment not to exceed one (1) year, to a fine not to exceed \$5,000.00, or to both such imprisonment and fine;
  - (2) If the offense is a Class B offense, to a term of imprisonment not to exceed six (6) months, to a fine not to exceed \$1,000.00, or to both such imprisonment and fine;
  - (3) If the Offense is a Class C offense, to a term of imprisonment not to exceed 120 days, a fine not to exceed \$500.00, or to both such imprisonment and fine;
  - (4) If the offense is a Class D offense, to a term of imprisonment not to exceed sixty (60) days, to a fine not to exceed \$300.00, or to both such imprisonment and fine.
  - (5) If the offense is a Class E offense, to a fine not to exceed \$300.00, without imprisonment.

[Subsection (a)1, 2, 3, 4 and 5 amended by Res. No. 15-F-158.]

- (b) Imprisonment Limits Apply to All Restraints of Liberty - The limits on terms of imprisonment listed in Subsection (a), above, apply to imprisonment in the Tribal or any other jail or penitentiary, and also to full or part-time residence or confinement in a medical or rehabilitative facility required as a condition of probation or parole or otherwise ordered by the Tribal Court.
- (c) Additional Costs and Restitution - In addition to the fines listed in Subsection (a), above, the Tribal Court may assess costs as provided in Subsection 4-60-040(a). The Tribal Court also may order the defendant to make restitution to the victim to compensate the victim for damages from the commission of the offense.
- (d) Work for Tribe; Credit Toward Fines and Costs -
  - (1) The Tribal Judge, instead of or in addition to any other sentence which might be imposed, may sentence a defendant to work for the benefit of the Tribe for credit against a fine or imposition of costs, or for credit for jail time. Credit shall be granted at the rate of ten dollars (\$10.00) per hour worked, or one day of jail for each eight hours of work. Such sentence shall be imposed only if appropriate work opportunities exist and if the defendant volunteers for the work.
  - (2) The credit provided under Subsection (1) above shall also be granted for any work a defendant performs, other than work done for himself, done during and because of his status as a defendant, whether performed while imprisoned or not, whether part of a sentence or not, and whether performed before or after a finding of “guilty”.

### **5-90-020 General Sentencing Provisions**

- (a) If an offense is not designated as a Class A, B, C, D, or E offense, the sentence imposed for such offense shall be as specified in the ordinance establishing the offense.



- (b) If an offense is not designated as a Class A, B, C, D, or E offense, and no sentence is specified for the offense, then the offense shall be a Class E offense, and a person convicted of such an offense shall be sentenced as provided in Section 5-90-010 (a) (5).

#### **5-90-030 Probation and Restitution**

Nothing in this Chapter 5-90 shall prevent the imposition of a sentence involving probation or restitution, in accord with the provisions of Title 4.