

## **TITLE 3: CRIMINAL ACTIONS**

### **Chapter 1: Jurisdiction**

#### **§3-1-101 Criminal Jurisdiction-Generally.**

The Tribal Court shall have jurisdiction over all offenses enumerated in this Code, or in other enactments of the Council. The Tribal Court shall have criminal jurisdiction over any Indian. An Indian is defined as any person of Indian descent who is a member of a federally recognized Indian Tribe according to the laws of that Tribe, and any other person recognized by federal law as an Indian for any purpose.

## **Chapter 2: Criminal Procedure-Generally.**

### **§ 3-2-101 Complaints.**

Prosecution for violations of this Code shall be by complaint. No complaint filed in Court shall be valid unless it shall bear the signature of the plaintiff or complaining witness, a Prosecutor, a Presenting Officer, a police officer, a police employee, and is witnessed by the Clerk or a licensed notary public, provided, that citations issued pursuant to this Code shall satisfy this Section. All complaints must be on behalf of and in the name of the Spirit Lake Tribe.

### **§3-2-102 Limitation on Filing of Complaint.**

No complaint shall be filed charging the commission of any offense defined by this Code, unless the offense shall have been committed within a two-year period prior to the date of the complaint. If the complaint has been filed within the two-year period, there shall be no time limitation on further prosecution of the complaint, including apprehension, arrest, trial and sentencing, except as provided for in this Code. In calculating the two- year period, time absent from the Reservation shall not be included. This section shall not apply to actions in Juvenile Court.

### **§3-2-103 Hot Pursuit.**

Any police officer who observes any person inside the Reservation committing an offense defined by this Code or by federal law or who has probable cause to believe that the person has committed an offense, or who shall have a warrant commanding the officer to apprehend the person, may pursue and capture the

person or seize and impound the property in the person's possession if the person is attempting to flee the Reservation.

**§3-2-104 Grounds for Arrest.**

No member of the Tribal Police Department or other law enforcement officer of the Tribal shall arrest or apprehend any person for an alleged criminal offense except under the following circumstances:

- (1) When such offense shall occur in the presence of the arresting officer; or
- (2) When the arresting officer shall have probable cause to believe that the person to be arrested has committed such an offense; or
- (3) When the arresting officer acts pursuant to a warrant executed by the Tribal Court commanding the officer to arrest such person.

**§3-2-105 Warrants for Arrest.**

The Tribal Court shall have the authority to issue Warrants for Arrest. Such warrants may be issued *ex parte*, without a hearing, but only upon satisfaction of the issuing Judge that there is probable cause for the arrest. Such a warrant may be issued only upon a written complaint filed with the Tribal Court, bearing the signature of the complainant or the complaining witness, based upon reliable information or belief, which charges the commission of a criminal offense. Service of Warrants for Arrest shall be made only by a member of the Tribal Police Department or other duly authorized law enforcement officer of the Tribe.

**§3-2-106 Searches Pursuant to an Arrest or Warrant.**

Neither member of the Tribal Police Department nor any law enforcement officer of the Tribe shall search the person or property of any person, without the consent of that person, unless the search is incident to a lawful arrest or pursuant to a Warrant for Search and Seizure issued by the Tribal Court. If search is incident to a lawful arrest, the arresting officer may search the person so arrested and the person's property then under the person's direct and immediate control to locate and prevent the use of weapons and to prevent the destruction of evidence of the commission of the underlying criminal offense.

**§3-2-107 Warrants for Searches and Seizures.**

The Tribal Court shall have the authority to issue Warrants for Search and Seizure of any person, to search the physical person, premises and any property within the Reservation. Such a Warrant may be issued *ex parte*, without a hearing, but only upon the satisfaction of the issuing Judge that there is probable cause for the search and seizure. Such a Warrant may be issued only upon written complaint filed with the Tribal Court, bearing the signature of the complainant or the complaining witness based upon reliable information or belief, which charges the commission of a criminal offense. No Warrant for Search and Seizure shall be valid unless it sufficiently bears the description and name of the person or property to be searched and seized and describes with sufficiency the articles or property to be seized.

**§3-2-108 Service of Search and Seizure Warrants.**

Service of Warrants for Search and Seizure and the conduct of the search shall be only by a member of the Tribal Police

Department or other duly authorized law enforcement officer of the Tribe. An inventory of the items or property seized shall be filed with the Tribal Court and a copy shall be forwarded to the person from whom the items or property was seized.

**§3-2-109 Pre-Sentence Confinement.**

No person shall be detained, confined, jailed or imprisoned for more than 30 days prior to sentencing under the authority of the Tribe and this Code, unless pursuant to an order of commitment issued by the Tribal Court.

**§3-2-110 Duties of an Officer.**

A police officer that makes an arrest and/or search and seizure shall proceed as follows:

- (1) The officer shall inform the person to be arrested of his/her rights prior to any custodial questioning.
- (2) The officer shall announce and identify himself/herself prior to making of an arrest and/or search and seizure of property, unless the identification is impracticable, presents a danger to the officer and/or the officer reasonably believes the identification will enable evidence of a crime to be destroyed.
- (3) The officer shall advise the person in control or possession of the premises to be searched or property to be seized of the person's rights prior to making a search or seizure.
- (4) The officer shall advise the person to be arrested or the person in control or possession of the premises to be searched or property to be seized whether the officer has a search warrant.

## **Chapter 3: Bail**

### **§3-3-101 Eligibility for Bail.**

In accordance to the provisions of this Code, any person, charged with a criminal offense, may be admitted to bail by the Tribal Court at any time prior to a final judgment on the charge or pending appeal on the final judgment.

### **§3-3-102 Cash or Surety Bond.**

The Court may require, as a condition of bail, the posting of cash or surety bond in an amount not to exceed \$5,000.00 which, in the opinion of the Tribal Court, will ensure the appearance of the person at all times and places lawfully required.

### **§3-3-103 Promise to Appear.**

In the discretion of the Tribal Court, the Court may admit a person to bail who promises in writing to appear before the Tribal Court at all times and places lawfully required; provided, however, the Tribal Court shall not admit a person to bail upon such promise if the Tribal Court is not reasonably satisfied that the person will appear when and where so required.

### **§3-3-104 Terms and Conditions of Bail.**

In admitting any person to bail, the Tribal Court may set such terms and conditions as the Court, in its discretion, may deem necessary or appropriate.

### **§3-3-105 Ineligibility for Bail.**

A person shall not be admitted to bail when the person is in an intoxicated condition.

**§3-3-106 Violation of the Terms and Conditions of Bail.**

Violation by a person of any of the terms and conditions of the bail, or a failure to appear when and where lawfully required, shall be contempt of Court, which shall be punished according to the provisions of this Code. In addition, the Tribal Court may order any bond to be forfeited and may issue a Warrant for the Arrest of the violator and may hold the violator without bail until the next hearing.

**§3-3-107 Return of Bail or Bond.**

Any cash or surety bond, which has not been ordered to be forfeited shall be returned upon final judgment on the charge, including the completion of any appeal.

## Chapter 4: Citations

### **§3-4-101 Citations in Lieu of Detention.**

Whenever a person is arrested for a violation of this Code, the arresting officer, or any other officer, may serve upon the arrested person a citation and notice to appear in Court in lieu of keeping the person in custody or requiring bail or bond. In determining whether to issue a citation and notice to appear, the officer may consider the following factors:

- (1) Whether the person has identified himself satisfactorily.
- (2) Whether detention appears reasonably necessary to prevent imminent bodily harm to the person or to another, prevent injury to property or prevent a breach of the peace.
- (3) Whether the person has ties to the Tribe or is a local resident, so as to provide reasonable assurance of the person's appearance before the Court, or whether there is substantial likelihood that the person will refuse to respond to the citation.
- (4) Whether the person previously has failed to appear in response to a citation issued pursuant to this Section or to other lawful process of the Court.

### **§3-4-102 Citation Contents.**

- (1) The citation shall be written and include the name of the person, the person's address, date of birth, sex, the date, time, place and description of the offense charged, the date on which the citation was issued, and the name of the citing officer. A space shall be provided for the person to sign a promise to appear.



- (2) To secure the person's release, the person must give a written promise to appear in Court as required by the citation.
- (3) The citation shall also state the time and place at which the person is to appear in Court to hear the charges and post bail, which shall not be less than 72 hours after the date of the citation, nor more than 15 after the date of the citation.

**§3-4-103 Effect and Procedure of Citations.**

- (1) When completed by the officer, the citation shall serve as the complaint for purposes of prosecution.
- (2) If a defendant fails to appear, the Judge shall issue a Warrant of Arrest, and shall order and bail deposited by the defendant forfeited.

## **Chapter 5: Arraignments, Pleas and Trial Dates**

### **§3-5-101 Charging and Bonding.**

As soon as reasonably possible after arrest, but not more than 72 hours thereafter, the defendant shall be informed of the charges against him/her and be given a reasonable bond. As enacted January 5, 2015 via A05-15-095.

### **§3-5-102 Arraignment, Reading of Complaint and Plea.**

When the defendant is brought before the Judge for arraignment, the defendant shall be provided with a copy of the complaint and be informed of the charge(s) against him/her.

The defendant shall also be informed of his/her rights under the Spirit Lake Law and Order Code and Constitution and Federal Law, including the right appear and defend against the charge(s) in person and/or with a spokesperson or attorney provided at the defendant's own expense. If the defendant desires, but does not presently have spokesperson, he/she will be given a reasonable time to secure a spokesperson.

At arraignment, the complaint shall be read and explained to the defendant and the defendant shall plead "Guilty" or "Not Guilty." If the defendant refuses to plead, the Judge shall enter that fact and a plea of "Not Guilty" on the defendant's behalf. As enacted January 5, 2015 via A05-15-095.

### **§3-5-103 Time of Trial.**

- (1) When the defendant is brought before the Judge upon a Warrant of Arrest, the case shall be set for trial within 120 days unless continued for cause or at the request of the defendant. Bail shall then be set in

accordance with Chapter 3 of the Spirit Lake Law and Order Code.

- (2) When the defendant is summonsed before the Judge pursuant to a citation as provided herein, the defendant shall appear on the date indicated on the citation hear the charges, post bail, enter a plea and be assigned a trial date. Trial shall be set within 120 days unless continued for cause or at the request of the defendant.
- (3) A defendant may post bail, enter a plea, and request a trial date prior to the return of the citation, provided, that bail or other bond satisfactory to the Judge is posted. A trial date shall be set within 120 of the return date on the citation unless continued for cause or at the request of the defendant.

**§3-5-104 Sentencing.** Upon a plea of "Guilty" the Judge may impose a sentence at once or at a later date not to exceed 30 days.

**§3-5-105 Fine Schedule.** The Judges shall establish a fine schedule for specified violations of this Code subject to approval of the Tribal Council.

## **Chapter 6: Trial Procedure**

### **§3-6-101 Prosecution.**

The Tribe shall prosecute the charge by presenting evidence against the defendant pursuant to the testimony of the law enforcement officers and any other witnesses called to support the charge, and in presenting such evidence, the Tribe may make use of either a Tribal official, member, spokesperson or a professional attorney.

### **§3-6-102 Evidence.**

The Court shall not be bound by the common law rules of evidence, but shall use its own discretion as to what evidence is necessary and relevant to the charge and defense.

### **§3-6-103 Burden of Proof.**

The Court shall require the charge to be proven beyond a reasonable doubt. The defendant shall be provided a full opportunity to present a defense.

### **§3-6-104 Bench Trial.**

In a case tried without a jury, the Judge shall make a general finding of guilt or innocence and shall, upon request of any party, make specific findings, which may be embodied in a written decision.

### **§3-6-105 Jury Trial.**

Any person accused of an offense punishable by imprisonment may demand a jury trial. The demand may be oral in open Court or by filing a written demand with the Clerk. In any case, the demand must be made at least 15 days prior to the date set for trial or

the right shall be deemed waived. The verdict of the jury shall be unanimous and shall be returned by the jury in open Court.

**§3-6-106 Lesser Included Offenses.**

The defendant may be found guilty of a lesser included offense, despite not having been formally charged with the lesser offense.

**§3-6-107 Judgment and Sentencing in Criminal Cases.**

- (1) Upon a verdict of "Not Guilty" on all charges, the Tribal Court shall order the defendant released from custody and return any cash or surety bond for bail, which has not been forfeited. Upon a verdict of "Guilty" on any charge, the Court shall pronounce judgment and sentence the defendant within a reasonable time thereafter.
- (2) Prior to adjudging a sentence for the conviction of a criminal offense, the Tribal Court shall afford a reasonable opportunity for the defendant to present information or matters of extenuation and mitigation which may not have been disclosed at trial, including statements by other persons. The Tribal Court may also request and receive pertinent reports, advice and recommendations from any other person or agency, which may assist the Court in adjudging an appropriate sentence. The defendant shall be advised of the content, identity and source of any such reports or recommendations and afforded an opportunity to comment or rebut the same.
- (3) Upon a judgment sentencing a convicted person to imprisonment, the person shall be given a signed copy

of the judgment and the order of commitment. The person taking custody of the convicted defendant shall receive similar copies and shall sign a receipt acknowledging custody, which shall be filed in the records of the Tribal Court.

- (4) Upon a judgment sentencing a convicted person to a fine, the person shall be given a copy of the judgment. The judgment shall direct the defendant to make payments to the Judicial Clerk in accordance with the terms of payment prescribed by the Tribal Court. The Tribal Court may order the fine to be paid in installments on a schedule to be specified by the Court. Willful or negligent failure to pay a fine in accordance with the terms of the sentence shall be contempt of Tribal Court and punished according to this Code. In support of enforcement and satisfaction of judgments and fines, the Tribal Court shall have the authority to order any other persons within its jurisdiction to deliver or surrender to the Judicial Clerk of the Tribal Police Department any money, goods or other property in their possession or under their control owned by or subject to the claim of the defaulting party; provided, however, that such orders shall be issued only following notice to the defaulting party and a hearing at which the party is determined to be in default. The provisions of this Section shall be subject to any restrictions, which may exist under the federal laws of the United States.
- (5) In addition to any sentence, the Tribal Court may order a convicted person to pay the reasonable costs incurred by the Tribal Court, Judicial Clerk, Tribal Police Department and any other Tribal agency, which

is directly attributable to the case in which the person was convicted. Those costs shall not include general expenses or operation costs of the offices or agencies.

- (6) At the time of adjudging a sentence, or at any time thereafter prior to the completion of a sentence, whether of a fine, imprisonment or both, the Tribal Court may suspend all or any unsatisfied portion of that sentence. Such suspension shall be upon reasonable terms and conditions as deemed necessary and appropriate to the Tribal Court.
  - (a) The period of suspension of all or any portion of a sentence shall not extend longer than one year from and after the date of the original sentence, and if at that time the convicted person has complied fully with all of the terms and provisions of the suspension, the sentence shall be satisfied and discharged. The Tribal Court shall issue a Certificate of Discharge to that effect.
  - (b) Appropriate considerations for suspension of a sentence include, but are not limited to, the prior record of the convicted person, background and character, financial conditions, family and employment obligations, facts of extenuation or mitigation of the offense for which the person was convicted, the severity of the offense and the degree to which the victim or any other person was injured or damaged by the crime, the apparent permanence of residency within the Reservation, sense of pertinence and other relevant factors. As conditions of suspension, the Tribal Court may

require, among other things, that the convicted person:

- (i) Satisfactorily meet responsibilities for the care and support of the family.
  - (ii) Perform labor or services for the benefit of the Tribe.
  - (iii) Undergo available medical or psychiatric treatment.
  - (iv) Satisfactorily participate in a rehabilitation program, such as driver education or Alcoholics Anonymous.
  - (v) Not possess firearms or other dangerous weapons.
  - (vi) Make restitution or reparation for any damage, loss or injury caused by the offense.
  - (vii) Not associate with individuals or groups of individuals designated by the Tribal Court.
  - (viii) Restriction from such areas or places as may be designated by the Tribal Court.
  - (ix) Not commit any offense under this Code or the ordinances of the Tribe, nor under the criminal or traffic laws of the United States or any State or any subdivision thereof.
  - (x) Not operate a motor vehicle.
  - (xi) Maintain a daily schedule as specified by the Tribal Court.
- (c) Any person accused of violating the terms and conditions of the suspension shall be given notice and a hearing before the Tribal Court. If the Tribal Court finds by a preponderance of the evidence that the terms and conditions of the suspended sentence has been violated, the Tribal



Court may revoke the suspension and order the sentence immediately reinstated with payment of the fine or imprisonment or both. No sentence may be increased in severity nor may its nature or character be changed as a result of the revocation of the suspension.

**§3-6-108 Other procedures.**

All additional procedures set out in this Code shall be followed in any criminal actions to the extent that they are applicable.

**§3-6-109 Civil Rights.**

All accused persons shall be guaranteed all civil rights secured under the Tribal Constitution and the Spirit Lake Law and Order Code.

## Chapter 7: Criminal Offenses

### **§3-7-101 Abduction.**

Any Indian who shall willfully take away or detain another person against the person's will or without the consent of the parent or other person having lawful care or charge of the person shall be deemed guilty of abduction. Upon conviction thereof, the person shall be sentenced to imprisonment for a period not to exceed one year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

### **§3-7-102 Assault.**

Any Indian who shall attempt, threaten or cause bodily harm to another person through unlawful force or violence or who shall put another in fear of imminent bodily injury or who shall be put in fear of the imminent bodily injury to a family member through threats of unlawful force or violence shall be deemed guilty of assault and may be sentenced to imprisonment for not more than one year or to a fine not to exceed \$5000.00 or both imprisonment and fine with costs. The Court may require the convicted person to furnish a satisfactory peace bond for one year.

### **§3-7-103 Assault and Battery.**

Any Indian who shall willfully strike another person or otherwise inflict bodily injury or who shall by offering violence cause another to harm himself/herself shall be deemed guilty of assault and battery and may be sentenced to imprisonment for not more than one year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs. The Court may

require the convicted person to furnish a satisfactory peace bond for one year.

**§3-7-104 Bribery.**

Any Indian who shall give or offer to give money, property or services or anything else of value to another person with corrupt intent to influence another in the discharge of public duties or conduct and any Indian who shall accept, solicit or attempt to solicit any bribe, as above defined, shall be deemed guilty of Bribery and may be sentenced to imprisonment for not more than one year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs. Any Tribal office held by such person shall be forfeited.

**§3-7-105 Carrying Concealed Weapons.**

Any Indian who shall go about in public places armed with a dangerous weapon concealed upon his/her person, unless that person shall have a permit signed by a Judge of the Spirit Lake Tribal Court and countersigned by the Superintendent of the Reservation, shall be deemed guilty of Carrying a Concealed Weapon and may be sentenced to imprisonment for not more than one year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs. The weapon carried may be confiscated and upon conviction shall become the property of the Spirit Lake Tribe.

**§3-7-106 Minor Carrying Firearm or Gun.**

Any Indian under the age of 18 years who shall go about anywhere within the Reservation armed with a shotgun, rifle, air gun or other firearm, unless the parent or guardian shall have obtained a permit signed by the Judge of the Spirit Lake Tribal

Court and countersigned by the Superintendent of the Reservation, shall be guilty of a Minor Carrying a Firearm or Gun and may be sentenced to detention of not more than 60 days or a fine of \$600.00 or both imprisonment and fine with costs.

The parents of the minor, who shall be noticed into Court, may be required to pay for all damages to persons and property upon a showing that the parent knew the minor was carrying a firearm or the parent was negligent in the supervision of the minor as may be evidenced by the minor being out after curfew hours with no valid defense.

Every parent or guardian applying for a permit shall agree to pay all damages to persons or property resulting from the use of the firearms in the hands of the person for whom the permit has been issued. Any gun seized for violation of this Section may be confiscated and upon conviction shall become the property of the Spirit Lake Tribe.

**§3-7-107 Cruelty to Animals.**

Any Indian who shall torture or cruelly mistreat any animal shall be deemed guilty of Cruelty to Animals and may be sentenced to imprisonment for not more than 6 months or a fine not to exceed \$1000.00 or both imprisonment and fine with costs.

**§3-7-108 Contributing to the Delinquency of a Minor.**

Any Indian who shall knowingly or recklessly by act or omission encourage, cause or contribute to the unlawful conduct of a person under the age of 18 years shall be deemed guilty of Contributing to the Delinquency of a Minor and may be sentenced to imprisonment for not less than 5 days or not more than one year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-109 Cutting Green Timber Without a Permit.**

Any Indian who without first securing a proper permit cuts any standing green timber off an Indian Trust Allotment, except for personal use of the allottee or Tribal land, shall be guilty of Cutting Green Timber Without a Permit and may be sentenced to imprisonment for not more than 30 days or a fine not to exceed \$1000.00 or both imprisonment and fine with costs.

**§3-7-110 Deer Shining.**

This Code shall apply to all persons within the jurisdiction of the Spirit Lake Tribal Court:

- (1) No Indian shall hunt any deer during the hours between sunset and sunrise within the boundaries of the Spirit Lake Reservation. Any Indian convicted of hunting deer in the nighttime may be sentenced to imprisonment for not more than 60 days or a fine not to exceed \$500.00
- (2) Any Indian found shining a light upon the woods or fields where deer may be found within the boundaries of the Spirit Lake Reservation while in the possession of a rifle or shotgun shall be guilty of "Deer Shining" and may be subject to the same penalties set forth above.

**§3-7-111 Disobedience to a Lawful Order of the Court.**

Any Indian who shall willfully disobey any order, subpoena, warrant or command duly issued, made or given by the Tribal Court or any officer thereof, shall be guilty of Disobedience to a Lawful Order of the Court and may be sentenced to imprisonment

for not more than one year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-112 Disposing of Property of an Estate.**

Any Indian who, without proper authority or color of authority, sells, trades or otherwise disposes of any property of an estate before the determination of the heirs, shall be deemed guilty and may be sentenced to imprisonment for not more than one year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-113 Disorderly Conduct.**

Any Indian who shall cause public inconvenience, annoyance or alarm by:

- (1) Engaging in fighting or threatening to engage in violent or tumultuous behavior; or
- (2) Making unreasonable noise or offensively coarse utterances, gestures or displays or addressing abusive language to any person present; or
- (3) Creating a hazardous or physically offensive condition by any act which serve no legitimate purpose of the actor; or
- (4) Appearing in public places in an intoxicated condition and doing any of the following:
  - (a) passing out or falling or sleeping in a public place or on the property of another without permission; or
  - (b) bothering, disrupting or otherwise intruding upon another person or group of persons; or

- (c) wandering about without being able to give a reasonable account of a destination to a law enforcement officer; or
- (d) appearing or being found in an area set aside for religious or ceremonial activities or during a period of such a religious or ceremonial or public activity shall be guilty of Disorderly Conduct.

Upon conviction, the person may be sentenced to imprisonment for not more than 3 months or a fine not to exceed \$500.00 for the first offense or both imprisonment and fine with costs; imprisonment for not more than 6 months or a fine not to exceed \$1000.00 for subsequent offenses or both imprisonment and fine with costs.

Upon a subsequent conviction under paragraph (a)(4) of this section, an additional sentence of not more than 6 months of alcohol related treatment or aftercare and up to 160 hours of public service to the Tribe may be imposed.

### **§3-7-114 Embezzlement.**

Any Indian who shall, having lawful custody of property not his/her own, appropriate the same to use with intent to deprive the owner thereof shall be guilty of Embezzlement and may be sentenced to imprisonment for not more than one year months or a fine not to exceed \$5000.00 or both imprisonment and fine with costs. As used in this Section, embezzlement shall include the spending of a minor's funds by parents or guardians for purposes other than by an order of the Tribal Court or for the education, medical and dental care and general well being and benefit of the minor.

**§3-7-115 Escape.**

Any Indian who, being in lawful custody for any offense, shall escape or attempt to escape or who shall permit or assist another person to escape from lawful custody shall be guilty of escape and may be sentenced to imprisonment for not more than one year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-116 Extortion.**

Any Indian who shall willfully, by making false charges against another person or by any other means whatsoever, extort or attempt to extort any money, goods, property or anything else of value shall be guilty of extortion and may be sentenced to imprisonment for not more than 6 months or a fine not to exceed \$1000.00 or imprisonment and fine with costs.

**§3-7-117 Failure to Support Dependent Persons and Abandonment.**

Any Indian who shall, because of intemperance or gambling or for any other reason refuse or neglect to provide good shelter or care for those dependent upon him/her including children born out of wedlock, or who shall abandon those dependents or who shall fail or neglect to properly expend funds awarded for the care and support of dependents shall be guilty of Failure to Support Dependent Persons or Abandonment and may be sentenced to imprisonment for not more than 1 year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-118 Failure to Send Children to School.**

Any Indian, who shall, without good cause, neglect or refuse to send his/her children or any children under his/her care under the age of 18 years to school shall be deemed guilty and may be



sentenced to imprisonment for not more than 60 days or a fine not to exceed \$500.00 or imprisonment and fine with costs. The Tribal Court may double the fine for each additional offense.

**§3-7-119 False Arrest.**

Any Indian who shall willfully and knowingly make, or cause to be made, the unlawful arrest, detention or imprisonment of another person shall be guilty of False Arrest and may be sentenced to imprisonment for not more than 6 months or a fine not to exceed \$500.00 or both imprisonment and fine with costs.

**§3-7-120 Fraud.**

Any Indian who shall, by willful misrepresentation or deceit or by false interpreting or by use of false weights and measures, obtain any money or other property shall be guilty of Fraud and may be sentenced to imprisonment of not more than 6 months or a fine not to exceed \$500.00 or both imprisonment and fine with costs.

**§3-7-121 Forgery.**

Any Indian who shall, with intent to defraud, falsely sign, execute or alter any written instrument, shall be guilty of Forgery and may be sentenced to imprisonment for not more than 1 year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-122 Transmitting a Communicable Disease.**

Any Indian who shall knowingly infect another person with a communicable disease including but not limited to venereal disease, HIV (Human Immuno Deficiency Virus), and AIDS (Auto Immune Deficiency Syndrome) may be sentenced to imprisonment for

not more than one year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-123 Illegal or Unauthorized Sale or Purchase of Any Trust or other Property Furnished or Made Available Under Programs Sponsored by the Tribe.**

(1) Any Indian who sells or buys or in any way disposes of or acquires any federal property or who wrongfully appropriates property made available or furnished pursuant to tribally conducted and government approved programs shall be guilty of this offense and may be sentenced to imprisonment for not more than 3 months or a fine not to exceed \$500.00 or both imprisonment and fine with costs.

(2) The Tribal Court shall certify the record and proceedings to the Spirit Lake Tribal Council, which may record the offense on the Tribal records for future consideration by the Tribal Council in administering Tribal programs.

**§3-7-124 Huffing.**

*Repealed on February 5, 2015 via SL Tribal Resolution A05-15-172.*

**§3-7-125 Injury to Public Property.**

Any Indian who shall, without proper authority, use or injure any public, government or Tribal Property, shall be deemed guilty of Injury to Public Property and may be sentenced to imprisonment for not more than one year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-126 Malicious Mischief.**

Any Indian who shall maliciously disturb, injure, damage or destroy any livestock, domestic animal or other property shall be guilty of Malicious Mischief and may be sentenced to imprisonment for not more than one year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-127 Public Nuisance.**

Any Indian who shall act in such a manner or fail to perform any lawful duty that:

- (1) Unreasonably and substantially annoys and injures or endangers the comfort, health or safety of three or more persons; or
- (2) Offends public decency; or
- (3) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for use or passage any lake, stream, or campground, pow-wow ground, public park, street, highway or road shall be guilty of Public Nuisance and may be sentenced to imprisonment for not more than one year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-128 Misbranding.**

Any Indian who shall knowingly and willfully misbrand or alter any brand or mark on any livestock of another person shall be guilty of this offense and may be sentenced to imprisonment for not more than 6 months or a fine not to exceed \$1000.00 or both imprisonment and fine with costs.

**§3-7-129 Operating a Dance Hall.**

Any Indian, or group of Indians who operate or maintain a public dance hall within the Reservation without having first obtained a permit. The permit will require the operator to comply with the laws of the Spirit Lake Tribe with reference to the opening, closing and having an officer in attendance. The permit shall be issued by the Tribal Court. A failure to obtain a license or any violation of the permit requirement shall be a violation of this section and may be punished by imprisonment for not more than 30 days or a fine not to exceed \$500.00 or both imprisonment, fine and costs.

**§3-7-130 Perjury.**

Any Indian who shall willfully and deliberately falsely swear or interpret in any judicial proceeding, make a sworn statement of affidavit knowing the same to be untrue or one who shall induce or procure another to do the same is guilty of Perjury and may be sentenced to imprisonment for not more than 1 year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-131 Receiving Stolen Property.**

Any Indian who shall receive or conceal or aid in concealing or receiving stolen property, knowing the same to be stolen, embezzled or obtained by fraud or false pretense, robbery, burglary, shall be guilty of Receiving Stolen Property and may be sentenced to imprisonment for not more than 1 year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-132 Resisting Lawful Arrest.**

Any Indian who shall willfully and knowingly, by force or violence, resist or assist another person to resist a lawful

arrest shall be guilty of Resisting Lawful Arrest and may be sentenced to imprisonment for not more than 1 year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-133 Violence to a Police Officer, Judge, Member of the Tribal Council, Officer of the Tribal Court or Tribal Employee.**

Any Indian who shall willfully or knowingly, by force or violence, render physical aggression towards a police officer, Judge of the Tribal Court, member of the Tribal Council, Officer of the Tribal Court or a tribal employee shall be guilty of this offense and shall be sentenced to imprisonment for not more than 1 year. This sentence may not be suspended. Further, the person may be sentenced to a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-134 Theft.**

Any Indian who shall take the property of another with intent to deprive another of possession of the property shall be guilty of Theft and may be sentenced to imprisonment for not more than 1 year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-135 Trespass.**

Any Indian who shall go upon or pass over any cultivated or other lands of another person without the permission of the owner or occupant or who shall willfully or knowingly allow livestock to occupy or graze on the cultivated or lands of another, shall be guilty of Trespass and may be sentenced to imprisonment for not more than 45 days or a fine not to exceed \$500.00 or both imprisonment and fine with costs.

**§3-7-136 Unauthorized Leasing.**

Any Indian who leases his/her land in violation of the leasing regulations shall be guilty of Unauthorized Leasing and may be sentenced to imprisonment for not more than 30 days or a fine not to exceed \$60.00 or both imprisonment and fine with costs.

**§3-7-137 Assault with Intent to Commit Rape.**

Any Indian who shall assault a person with intent to commit rape shall be guilty of Assault with Intent to Commit Rape and may be sentenced to imprisonment for not more than 1 year or fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-138 Carnal Knowledge of a Person Under Sixteen Years of Age.**

Any Indian who shall have sexual intercourse with any person under the age of 16 years or any Indian who aids or permits any such violation shall be guilty of this offense and may be sentenced to imprisonment for up to 1 year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-139 Cutting Fence.**

Any Indian who shall willfully cut the wire of a fence belonging to another person shall be guilty of this offense and may be sentenced to imprisonment for not more than 60 days or a fine not to exceed \$1000.00 or both imprisonment and fine with costs.

**§3-7-140 Slander.**

Any Indian who maliciously, in the presence of another person who is not the subject of the utterance, falsely utters, delivers or states anything which tends to hold a person up to

public hatred, contempt or ridicule or deprives a person of public confidence or social intercourse or which tends to vilify or blacken the memory of one who is dead shall be guilty of Slander and may be sentenced to imprisonment for not more than 1 year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-141 Libel.**

Any Indian who maliciously, by the use of any printing, writing, sign, picture, representation or effigy holds a person up to public hatred, contempt or ridicule or deprives a person of public confidence or social intercourse or which tends to vilify or blacken the memory of one who is dead shall be guilty of Libel and may be sentenced to imprisonment for not more than 1 year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-142 Aiding and Abetting.**

Any Indian who shall knowingly, willingly and with intent assist another in the commission of a criminal offense by advising, procuring or encouraging the commission of a crime shall be guilty of Aiding and Abetting and may be sentenced to imprisonment for not more than 1 year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-143 Repeaters.**

Any Indian who is convicted 4 or more times of the same offense under Title 3 shall be considered a repeat offender and upon the fourth conviction may be sentenced, according to the Tribal Court's discretion so long as jail time does not exceed one year and fines do not exceed \$5000.00.

**§3-7-144 Liquor Violation.**

*Repealed on February 5, 2015 via SL Tribal Resolution A05-15-172.*

**§3-7-145 Public Intoxication.**

*Repealed on February 5, 2015 via SL Tribal Resolution A05-15-172.*

**§3-7-146 Curfew Violation.**

Any juvenile Indian who appears in a public place, street, automobile or any other place not his/her legal residence between the hours of 10:00 p.m.-6:00a.m. unless accompanied by a parent, guardian or other person having physical charge of the minor or in attendance at or returning directly home from an organized school, church or Tribal function shall be guilty of a Curfew Violation and may be sentenced to up to three months probation on such terms and conditions as the Judge deems equitable or a fine not to exceed \$50.00 or both probation and fine with costs. Further, the Judge may order the parent, parents or legal guardian to be legally responsible for supervising the minor during the probationary term. The Judge may add one month of probation and \$25.00 fine to each subsequent charge of this offense.

**§3-7-147 Failure to Supervise Minor.**

Any parent, guardian or other person having physical charge of a minor who allows the minor under the age of 18 to be away from the minor's place of residence in a public place, or a private place other than the place where the minor intends to spend the night with the permission of the parent and the owner of such



place, or in a vehicle driving about after the aforementioned curfew hours, unless accompanied by a parent, guardian or other person having physical charge of the minor or in attendance at or returning directly home from an organized school, church or Tribal function shall be guilty of this offense and may be sentenced to imprisonment for not more than 3 months or a fine not to exceed \$250.00 or both imprisonment, fine with costs.

**§3-7-148 Breaking and Entering.**

Any Indian using any force whatsoever to enter in any manner any lands, buildings of any kind, property of any kind or other possessions owned by the Tribe or any lands, buildings of any kind, property of any kind, dwellings of any kind of any Indian shall be guilty of Breaking and Entering and may be sentenced to imprisonment for not more than 1 year or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

**§3-7-149 Marijuana and Controlled Substance.**

*Repealed on February 5, 2015 via SL Tribal Resolution A05-15-172.*

**§3-7-150 Unauthorized Use of a Vehicle.**

Any Indian who shall take, drive, or operate another's motorized vehicle, without the consent of the owner, with the intent to temporarily deprive the owner of its use or possession shall be guilty of this offense and may be sentenced to imprisonment for not more than 3 months or a fine not to exceed \$5000.00 or both imprisonment and fine with costs.

If the vehicle sustains damages while in the custody, possession, or under the control of the person violating this section, the violator shall be required to make double restitution of the amount of actual damage to the vehicle.

**§3-7-151 Fleeing an Officer.**

Any Indian who flees from a law enforcement officer after the law enforcement officer has requested that individual to stop based upon (1) the officer's probable cause that the individual has committed or assisted in the commission of a crime or violated a tribal ordinance or (2) pursuant to a warrant, shall be guilty of an offense and upon conviction shall be subject to up to 1 year imprisonment or \$5000 fine or both imprisonment, fine and costs.

**§3-7-152 Homicide in the First Degree.**

A. It shall be unlawful to:

1. Purposefully, knowingly and wrongfully with malice aforethought cause the death of another human being, or
2. Cause the death of another human being due to the commission or attempted commission of a felony.

B. Homicide in the first degree shall be punishable by a fine not to exceed \$5,000.00, or by a term of imprisonment in the Tribal Jail not to exceed one year, or both plus costs.

**§3-7-153 Homicide in the Second Degree.**

A. It shall be unlawful to:

1. Recklessly or negligently with disregard of the possible consequences of ones conduct to cause the death the another human being; or
2. Cause the death of another human being by operating a motor vehicle in a reckless, negligent, or careless manner, or while under the influence of an alcoholic beverage, intoxicating liquor, a controlled substance, or

any drug, to a degree which renders the person incapable of safely driving a vehicle.

a. A blood alcohol content in excess of .10 shall create a rebuttable presumption that the person was under the influence of an alcoholic beverage.

b. For purposes of this section, a motor vehicle is any self-propelled vehicle and includes, but is not limited to, any automobile, truck, van, motorcycle, train, engine, watercraft, aircraft or snow mobile.

B. Cause the death of a human being due to the commission of any criminal offense.

C. Homicide in the second degree shall be punishable by a fine not to exceed \$5,000.00, or by a term of imprisonment in the Tribal Jail not to exceed one year or both, plus costs.

#### **§3-7-154 Rape in the First Degree**

A. It shall be unlawful to intentionally and wrongfully:

1. Compel another to submit to sexual intercourse by force or by the threat of imminent death, serious bodily injury, extreme pain, or kidnapping to be inflicted on that person or anyone else; or

2. Engage in sexual intercourse with a person under the age of fourteen, regardless of consent.

B. Rape in the first degree shall be punishable by a fine not to exceed \$5,000.00 or by imprisonment for not more than one year, or both imprisonment and fine with costs.

#### **§3-7-155 Rape in the second degree.**

A. It shall be unlawful to intentionally and wrongfully:

1. Compel another to submit to sexual intercourse by any threat that would prevent resistance by a person of ordinary resolution; or
2. Engage in sexual intercourse with another whose power to appraise or control their conduct has been substantially impaired by the administration or employment of drugs or other intoxicants, without their knowledge, and for the purpose of preventing resistance; or
3. Engage in sexual intercourse with a person with the knowledge that the person suffers from a mental disease or defect which renders that person incapable of appraising the nature of their conduct; or
4. Engage in sexual intercourse with a person under the age of sixteen but over the age of fourteen, regardless of consent, the perpetrator being at least four years older than the victim.

B. Rape in the second degree shall be punishable by a fine not to exceed \$5,000.00 or imprisonment of not more than one year or both fine and imprisonment with costs.

### **§3-7-156 Child Abuse**

Any person who shall willfully or maliciously commit any acts of violence or abuse as that term is defined in the Spirit Lake Children's Code on any child, causing any harm including but not limited to emotional harm or injury, under the age of eighteen (18), shall be guilty of the offense and, upon conviction thereof, shall be sentenced to a fine of not more than \$5000.00 or confinement for a period not to exceed 1 year or both, with costs, and may be required to undergo such medical evaluation and treatment as may be ordered by the Court.

**§3-7-157 Expungement of Records.**

Any juvenile who has been adjudicated delinquent or unruly may petition the Court for the expungement of the record or the Court on its own motion may initiate the expungement proceedings concerning the record of any child who has been under the jurisdiction of the Court. Such petition shall be filed or such court order entered no later than two years after the date adjudicating the child delinquent or unruly.

- (a) Upon the filing of a petition for expungement or entering of a court order, the court shall set a date for a hearing and shall notify the Tribal Prosecutor and anyone else whom the Court has reason to believe may have relevant information related to the expungement of the record, including all agencies or officials known to have relevant files relating to the individual.
- (b) The Court shall order sealed all records in the petitioner's case in the custody of the Court any records in the custody of any other agency or official, if at the hearing the Court finds that:
  - (1) The subject of the hearing has not been convicted of a federal violation or a violation involving moral turpitude; and
  - (2) No proceeding involving a federal violation or a violation involving moral turpitude is currently pending or being investigated against the minor; and
  - (3) The rehabilitation of the minor has been attained to the satisfaction of the Court.
- (c) Upon the entry of an order to seal the records, the proceedings in the case shall be deemed never to have

occurred and all index references shall be deleted and the person, every agency, and the Court may properly reply that no record exists with respect to the child upon any inquiry in the matter.

- (d) Copies of the order shall be sent to each agency or official named therein.
- (e) Inspection of the records included in the order may thereafter be permitted on by the Court only upon petition by the person who is the subject of such records and only to those persons named in such petition.

**§3-7-158 Domestic Abuse.**

(1) Definitions. Terms used in this statute, unless a different meaning is clearly indicated by context, are defined as follows:

- (i) Family member or household member shall mean a relative, spouse, former spouse, adult or elderly person related by marriage or an adult or elderly person who resides or formerly resided in the residence persons who are in a dating relationship and persons who share a child in common.
- (ii) Bodily injury shall mean physical pain, illness, or an impairment of a physical condition, which has been inflicted by another person.
- (iii) Causing apprehension of bodily injury shall mean any physical act, which is intended to cause another person reasonably to fear immediate harm or possibly death.

(2) Criminal Domestic Abuse. A person commits criminal domestic abuse if he or she:

- (i) purposely or knowingly causes bodily injury to a family member or household member; or
- (ii) purposely or knowingly causes apprehension of bodily injury in a family member or household member.

(3) Mandatory Arrest.

- (i) A law enforcement officer shall arrest a person, anywhere, with or without a warrant, including a person's residence, if the officer has probable cause to believe: (a) that an assault has occurred; or (b) an assault has occurred and has resulted in bodily injury to the victim whether the injury is visible to the officer or not; or (c) that any physical action has taken place with the intention of causing another person reasonably in all probability serious bodily injury or death; and (d) the victim is the person's family member, household member or former household member.
- (ii) The officer, under this ordinance, is not required to arrest both parties when it is believed the parties have assaulted one another. The officer shall arrest the person he/she believes is the instigator. In making this determination, the officer shall carefully scrutinize and take into consideration; (a) the intent to protect victims of domestic abuse under this ordinance; (b) the extent of injuries inflicted or serious threats causing fear of physical injury; and (c) the previous history of domestic abuse between the persons involved.

(4) 12 Hour Hold -Non-Alcohol Related.

Any person arrested under this section shall be held without bail, in the custody of the Tribal Police Department for a period not to exceed twelve (12) hours, as a mandatory cooling down period.

(5) 24 Hour Hold - Alcohol Related.

Any person arrested under this section shall be held for a period not to exceed twenty-four (24) hours, as a mandatory cooling down period.

(6) Filing Complaint.

(i) The officer making the arrest under this section shall sign a complaint against the alleged abuser on behalf of the Spirit Lake Tribe. The officer shall submit a detailed report of the circumstances of the arrest, along with statements from the victim and other witnesses.

(ii) The preliminary report shall be completed in eight (8) hours.

(iii) The final and complete report shall be completed in twenty-four (24) hours.

(iv) The victim shall be subpoenaed as the primary witness for the prosecution.

(v) If the abuser and victim are husband and wife, the Communication Privilege shall not apply in domestic abuse cases.

(7) Liability of Law Enforcement Officers.

A law enforcement officer shall not be held liable in any civil proceeding for an arrest based upon probable cause, enforcement in good faith of a court order, or any other action



or omission in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident.

(8) Notice of Rights.

The officer shall advise the victim of abuse whether a shelter or other services are available in the community and give the victim immediate notice of the legal rights and remedies that are accessible to the victim under the laws of the Spirit Lake Tribe. The notice should include the victim's right to the following:

- (i) An order restraining the abuser from further acts of violence.
- (ii) An order directing the abuser to leave the household.
- (iii) An order preventing the abuser from entering the residence, school, workplace or place of business.
- (iv) An order awarding custody and/or visitation with any minor children.
- (v) An order directing the abuser to pay support to the victim and minor children when appropriate.

(9) Penalties.

The purpose of this statute shall be to deter all family violence on the Spirit Lake Reservation and to promote the healing of families whenever possible.

- (i) A person convicted of a first offense of domestic abuse shall be imprisoned for not less than fifteen (15) days nor more than 1 year, and may be fined an amount not to exceed \$5000.00. The court shall require mandatory counseling as a part of the sentence. Such counseling may include but it not limited to: alcohol/drug abuse, anger control, and

family counseling. Persons who practice traditional Indian religion shall be entitled to counseling by traditional healing methods recognized in the community as such.

(ii) A person convicted of a second offense of domestic abuse shall be imprisoned for not less than thirty (30) days nor more than 1 year and may be fined an amount not to exceed \$5000.00. The mandatory counseling set forth in the aforementioned subsection shall also apply as well as the traditional healing methods.

(iii) A person convicted of a third offense of domestic abuse shall be imprisoned for not less than ninety (90) days nor more than 1 year, any may be fined an amount not to exceed \$5000.00. The mandatory counseling of the aforementioned subsection applies as well as the traditional healing methods.

(10) Reporting Statistics.

A record of all reported cases of domestic abuse shall be kept by the Tribal Police Department. A semi-annual report shall be made by the Tribal Police Department with the exact number of domestic abuse cases handled in that time frame. This will be public information and available to all Tribal agencies.

**§3-7-159 Elderly Abuse**

(1) A person commits criminal Elderly Abuse if he or she:

(i) Purposefully or knowingly causes physical injury or monetary injury to an elderly person; or

(ii) Purposefully or knowingly causes apprehension of physical injury to an elderly person; or

(iii) Purposefully or knowingly abuses, neglects, or exploits an elderly person.

(2) Definitions.

(i) "Elderly" shall mean any person who has reached the golden age of fifty five (55) years and above.

(ii) "Abuse" shall mean the knowingly and purposeful infliction of physical injury or pain, sexual abuse, mental anguish, unreasonable confinement, intimidation, financial exploitation, the willful deprivation by a caretaker of the basic necessities of life; including, but not limited to, food, shelter, clothing and personal care which are necessary to prevent physical harm, mental anguish, or mental illness, or any other type of maltreatment.

(iii) "Caretaker" shall mean an individual who has the responsibility for the care of an elder, either voluntarily, by contract, receipt of payment for care as a result of a family relationship, or by an order of a court of competent jurisdiction.

(iv) "Exploitation" shall mean the act or process of using an elder and/or their resources for another person's profit, advantage, gain, or for monetary or personal benefit without legal entitlement.

(v) "Physical Injury" shall mean physical pain, bodily harm or physical impairment caused by malnutrition.

(vi) "Mental Anguish" shall mean to subject an elder to fear, agitation, confusion, severe depression, or other forms of serious emotional distress through threats, harassment, or other forms of intimidating behavior.

(vii) "Neglect" shall mean the willful or unwillful failure of a guardian, legally or voluntarily responsible employee of a public or private residential institution, home, or agency, or any other person legally responsible in a residential setting for an elder person's welfare to provide food, shelter, clothing, or services necessary to maintain the physical or mental well being of the elder person.

(viii) "Monetary injury" shall be deemed as expending funds improperly so that the elderly person's basic needs of food, clothing, shelter and medical attention are not being met.

(3) Sentencing and Penalty.

(i) Any person convicted of a first offense of Elderly Abuse shall be imprisoned for not less than twenty (20) days. The maximum sentence for a first offense of Elderly Abuse shall be one (1) year in prison, a five thousand dollar (\$5000) fine or both imprisonment and fines plus costs.

(ii) A person convicted of a second offense of Elderly Abuse shall be imprisoned for not less than thirty (30) days. The maximum sentence for a second offense of Elderly Abuse shall be one (1) year in prison, a five thousand dollar (\$5000) fine or both imprisonment and fines plus costs.

(iii) A person convicted of a third or subsequent offense of Elderly Abuse shall be imprisoned for not less than sixty (60) days. The maximum sentence for a third offense of Elderly Abuse shall be one (1) year in prison, a five thousand dollar (\$5000) fine or both imprisonment and fines plus costs.

(iv) Any person who has been convicted of Elderly Abuse, which has resulted in the death of the elderly person, may be excluded from the Spirit Lake Reservation pursuant to the provisions set forth in the applicable section of the Spirit Lake Law and Order Code.

*As enacted January 5, 2015 via A05-15-096.*

**83-7-160 Arson**

Any Indian who shall willfully burn or set on fire any, lands buildings or other possessions or property or who shall willfully set a fire manifestly dangerous to any human or animal life shall be deemed guilty of an offense and may be imprisoned for not more than one year or may be fined an amount not to

exceed \$5,000.00 or may be sentenced to both such imprisonment and fines plus costs.

**§3-7-161 Reckless Endangerment**

Any Indian who shall recklessly engage in conduct that places or may place another human being in danger of death or serious bodily injury, they shall be deemed guilty of an offenses and may be imprisoned for not more than one year or may be fined an amount not to exceed \$5,000.00 or may be sentenced to both such imprisonment and fines plus costs.

## CHAPTER 8: HABEAS CORPUS

### **§3-8-101 Who May Prosecute.**

Every person imprisoned or otherwise restrained of his/her liberty on the Spirit Lake Reservation may prosecute a writ of habeas corpus to inquire into the cause of his/her imprisonment or restraint and, if it be illegal, to be delivered therefrom.

### **§3-8-102 Writ for Purpose of Bail.**

When a person is imprisoned or detained in custody on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his/her petition, without alleging that the person is illegally confined.

### **§3-8-103 Application for Writ - How Made.**

Application for the writ is made by petition, signed either by the person for whom the relief is intended, or by some person on his/her behalf, and must specify:

- (1) The person being held is unlawfully imprisoned or restrained of liberty, why the imprisonment or restraint is unlawful, the officer or person by whom he/she is confined or restrained, the place where the person is being restrained, and the names of all the parties if they are known or describing them if they are not known.
- (2) The petition must be verified by the oath or affirmation of the person making the application for relief.

**§3-8-104 Content of Writ.**

When the Judge is satisfied that the writ should be issued, it must be issued without delay.

- (1) The writ must be directed to and must command the person having custody of or restraining the person on whose behalf the application is made to have the person being held or restrained before the Court at a time and place therein specified.
- (2) The issues to be determined upon return of the writ must be stated either in the writ, in an order attached to the writ or in a copy of the petition attached to the writ.

**§3-8-106 Service of the Writ.**

The writ must be served upon the person to whom it is directed and must be served in the same manner as a summons.

**§3-8-106 Content of the Return.**

The person upon whom the writ is served must make a return to the Court and state in the return:

- (1) Whether the detained person is in his/her custody or under his/her restraint and the authority for holding the person.
- (2) If the person making the return had previously had custody or was detaining the person identified in the writ, the return must state particularly to whom, what time and place, for what cause and by what authority the custody was released.
- (3) The return must be signed by the person making the return and unless that person is a sworn public

official and makes the return in an official capacity,  
the return must be verified by oath.

**§3-8-107 Hearing on Return.**

The detained person shall be brought before the Court by the person commanded in the writ as soon as possible. A hearing must be held on the day set and may be summary in nature. Evidence may be produced and compelled as in civil actions.

**§3-8-108 Judgment.**

If the detained person is in official custody, the person may not be released on a writ of habeas corpus for any technical defect in commitment not affecting the detained person's substantive rights. Following the hearing, the Judge shall make a judgment regarding the custody of the detained person as the facts and circumstances warrant. The judgment shall be effective immediately.



## CHAPTER 9: EXTRADITIONS

### **§3-9-101 Who May Be Extradited**

Any person residing, located or present within the exterior boundaries of the Spirit Lake Reservation for whom an arrest warrant has been issued by any state court, municipal court, federal court or tribal court for the alleged commission of an offense and/or violation of law beyond the jurisdiction of the Spirit Lake Tribal Court may be extradited to another jurisdiction as provided for in this section.

### **§3-9-102 Arrest**

Any BIA and/or Spirit Lake Police Officer may arrest any person who is the subject of an arrest warrant issued outside of the jurisdiction of the Spirit Lake Tribal Court if the officer is presented with said warrant and/or if the officer has probable cause to believe that the person is the subject of such an arrest warrant.

### **§3-9-103 Waiver of Hearing**

Any person arrested on a warrant issued outside the jurisdiction of the Spirit Lake Tribal Court may waive the right to an extradition hearing in Tribal Court and consent to return to the applicable jurisdiction by executing a written waiver in the presence of a correctional officer, police officer and/or judge of the Tribal Court. If a waiver is executed, the Tribal Court shall issue an order transferring custody of that person to the applicable jurisdiction or, with the consent of the applicable jurisdiction, authorize the voluntary return of the person to the applicable jurisdiction.

### **§3-9-104 Hearing**

Upon arrest of a person who is the subject of an arrest warrant issued outside of the jurisdiction of the Spirit Lake Tribal Court, that person must be brought before the Tribal Court for a hearing not more than five (5) days after the arrest. The Tribal Court shall conduct a hearing to determine the validity of the warrant issued by the jurisdiction seeking extradition, to determine whether the person before the Court is the same person charged in the warrant and to consider other relevant circumstances as may be presented to the Tribal Court.

### **§3-9-105 Issuance of Removal Order**

Upon a determination that the warrant from the jurisdiction seeking extradition is valid, the person in custody is the person charged in the warrant and after considering all other relevant matters, the Court may execute an order authorizing and directing removal of that person by the appropriate officials of the jurisdiction seeking extradition.

### **§3-9-106 Execution of Order and Notification to the Jurisdiction Seeking Extradition**

If the Tribal Court executes such an order, the Judicial Clerk shall then notify the jurisdiction seeking extradition that the person sought is in custody and that the person sought must be removed within five (5) days.

### **§3-9-107 Failure to Remove**

If an appropriate official of the jurisdiction seeking removal does not appear and take custody within the allotted time, the person taken into custody shall be released and shall not be

taken into custody again for the same charge unless a new warrant is issued by the jurisdiction seeking extradition.

**§3-9-108 Sanctions for Lack of Reciprocity**

In no case shall an arrest warrant from a court of another jurisdiction be honored if that jurisdiction, by its laws, rules or practices prohibits or refuses to provide reciprocal extradition of a person who may be the subject of an arrest warrant issued by the Spirit Lake Tribal Court.

*As enacted January 5, 2015 via A05-15-097.*

**SPIRIT LAKE TRIBE DRUG AND ALCOHOL CODE**

**TITLE 3 CHAPTER 10**

*As enacted February 20, 2015 via A05-15-172.*

**3-10-101 PURPOSE**

{INSERT STATED PURPOSE--- Comprehensive drug and alcohol code that sets forth prohibited acts}

**3-10-102 DEFINITIONS**

(1) "Controlled substance" - a drug or substance listed in this Chapter.

(2) "Deliver" or "delivery" - the actual, constructive, or attempted transfer of a controlled drug or substance whether or not there exists an agency relationship.

(3) "Distribute" - to deliver a controlled drug or substance. Distribute shall include delivery by gift, barter, or exchange with or without consideration.

(4) "Distributor" means a person who distributes or delivers a controlled drug or substance.

(5) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of a practitioner (in the course of professional practice or research), including prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery.

(6) "Dispenser" means a person who dispenses.

(7) "Imprisonment" - Incarceration in the appropriate tribal, state or federal correctional facility.

(8) "Manufacture" - The production, preparation, propagation, compounding, or processing of a controlled drug or substance,

either directly or indirectly by extraction from substances of a natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis.

"Manufacturer" - includes any person who packages, repackages, or labels any container of any controlled drug or substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer.

(9) "Person" - means any individual, corporation, government, or government subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(10) "Produce" or "production" - the manufacture, planting, cultivation, growing or harvesting of a controlled drug or substance.

(11) "Paraphenalia" - any equipment, product or material that is used or modified for making, using, or concealing any controlled drugs or substances.

(12) "Intoxicated" - To be under the influence of any substance to any degree.

(13) "Tribe" - The Spirit Lake Tribe.

(14) "Marijuana" means and includes all parts of the plant *cannabis sativa*, *cannabis americana*, and *cannabis indica*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plants, its seeds, or resin; but shall not include the mature stalks of such plants, fiber produced from such stalks, oil or cake made from the seeds of such plant, any compound, manufacture, salt, derivative, mixture, or preparation such mature stalks except the resin extracted therefrom, fiber oil, cake, or the sterilized seed of such plant which is incapable of germination.

(15) "Narcotic drugs" means coca leaves, opium, cannabis, isonipecaine, amidone, isoamidone, ketobemidone, lysergic acid diethylamide, commonly known as LSD, and every substance neither chemically nor physically distinguishable from them; and any other drugs to which the Federal laws relating to narcotic drugs may now apply.

(16) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability.

(17) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(18) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(19) "Possession" means actual care, custody, control or management.

(20) "Practitioner" means:

*(a) A physician, dentist, veterinarian, scientific investigator; or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze or conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this State; or*

*(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this State.*

(21) "Production" includes manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(22) "Ultimate user" means a person who has lawfully obtained and possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal by him or by a member of his household.

**3-10-103 CONTROLLED DRUGS AND SUBSTANCES.**

The following controlled drugs and substances are hereby declared to be controlled:

- A. Morphine
- B. Heroin
- C. Marijuana and marijuana derivatives
- D. Hashish and hash oil
- E. Lysergic acid diethylamide, commonly know as LSD.
- F. Phencyclidine
- G. Mescaline
- H. Peyote, except that when used as a sacramental in services of the Native American Church in a natural state which is unaltered except for drying or curing and cutting or slicing, it is hereby accepted.
- I. Psilocybin
- J. Tetrahydrocannabinol, whether as that which occurs in marijuana in its natural and unaltered state or as a chemical synthetic.
- K. Opium, coca leaves, cocaine, and opiate
- L. Amphetamine
- M. Methamphetamine Methaqualone
- N. Phentennine

O. Any substance which contains any quantity of the derivative of the barbituric acid

P. Codeine

Q. Chlordiazepoxide (Librium)

R. Diazepam (Valium)

S. Dextropropoxyphene (Darvon)

T. Any substance for which a medical prescription is required

The controlled substances listed in this section shall include any salt, compound derivative or preparation which is chemically equivalent or identical with any of the substances referred to in subdivisions (a) through (t), whether produced directly or indirectly from substance of vegetable origin or independently by means of chemical synthesis.

### **3-10-104 UNLAWFUL POSSESSION OF ALCOHOL**

It shall be unlawful for any person to knowingly possess, sell, trade, transport or manufacture any beer, ale, wine, whiskey or any article whatsoever that produces alcoholic intoxication.

Any person convicted for a violation of this section shall be punished for a period not to exceed six (6) months, or a fine not to exceed five hundred dollars (\$500.00), or by both such fine and imprisonment, with costs.

### **3-10-105 UNLAWFUL CONSUMPTION**

It shall be unlawful for any person to consume or otherwise be under the influence of any intoxicating beverage, controlled drug or other controlled substance to any degree, in a public or private place, under circumstances not amounting to a disorderly conduct (3-7-113).



Any person convicted for a violation of this section shall be punished for a period not to exceed sixty (60) days and a fine of not to exceed two hundred dollars (\$200) or by both such fine and imprisonment, with costs.

### **3-10-106 UNLAWFUL INGESTION**

Any person who willfully and knowingly ingests, inhales, or otherwise takes into the body any substances for the purpose of becoming intoxicated shall be deemed guilty of an offense.

Any person convicted for a violation of this section shall be punished for a period not to exceed six (6) months, or a fine not to exceed five hundred dollars (\$500.00), or by both such fine and imprisonment, with costs.

### **3-10-107 UNLAWFUL POSSESSION PARAPHENALIA**

A person who knowingly possesses, distributes, or dispenses drug related paraphernalia shall be deemed guilty of an offense.

Any person convicted for a violation of this section shall be punished for a period not to exceed one hundred and eighty (180) days, or a fine not to exceed five hundred dollars (\$500.00), or by both such fine and imprisonment, with costs.

### **3-10-108 UNLAWFUL POSSESSION OF A CONTROLLED DRUG OR SUBSTANCE**

It shall be unlawful for any person to knowingly possess a controlled drug or substance as defined in this Chapter, unless such substance was obtained directly or pursuant to a valid prescription or order from a medical practitioner, while acting in the course of his professional medical or veterinary practice.

Any person convicted for a violation of this section shall be punishable by imprisonment for a period not to exceed one (1)

year or a fine not to exceed five thousand dollars (\$5000.00), or by both such fine and imprisonment, with costs.

**3-10-109 UNAUTHORIZED MANUFACTURE, DISTRIBUTION OR DISPENSING OF ALCOHOL OR A CONTROLLED SUBSTANCE.**

It shall be unlawful for any person to manufacture, produce, distribute, or dispense alcohol or a controlled substance unless such manufacture, distribution, or dispensing is done directly under or pursuant to a valid license for manufacturing or distribution or dispensing, or pursuant to a valid prescription or order from a medical or veterinary practitioner while acting in the course of his professional practice.

Any person convicted for a violation of this section shall be punishable by imprisonment for a period not to exceed one (1) year or a fine not to exceed five thousand dollars (\$5000.00), or by both such fine and imprisonment, with costs.

**3-10-110 DISTRIBUTION, MANUFACTURE, OR POSSESSION WITH INTENT TO DISTRIBUTE**

Except as authorized by this Chapter, any person who knowingly or intentionally manufactures, distributes, or possesses with intent to manufacture or distribute a controlled drug or substance shall be deemed guilty of a crime.

Any person convicted of a violation of this section shall be subject to imprisonment not to exceed one (1) year, or to a fine not to exceed five thousand dollars (\$5000.00), or both such fine and imprisonment, with costs.

**3-10-111 DISTRIBUTION OF CONTROLLED DRUG OR SUBSTANCE TO A MINOR**

Any person who distributes marijuana, with or without consideration, to any other person under the age of 18 years is guilty of distribution of marijuana to a minor. It is no defense

to a prosecution under this section that the defendant was not aware of the true age of the other person to whom the marijuana was distributed.

Any person convicted of a violation of this section shall be subject to imprisonment not to exceed one (1) year, or to a fine not to exceed five thousand dollars (\$5000.00), or both such fine and imprisonment, with costs.

**3-10-112 KEEPING A PLACE FOR USE OR SALE OF CONTROLLED SUBSTANCE.**

It shall be unlawful for any person to keep or maintain a place which is resorted to by persons using controlled drugs and substances for the purpose of using such substance, or which is used for the keeping or selling of such substances.

Any person convicted of a violation of this section shall be punishable by imprisonment for a period not to exceed six (6) months, or to a fine not to exceed five hundred dollars (\$5000.00), or by both such fine and imprisonment, with costs.

**3-10-113 SEARCH WARRANTS -GROUNDS FOR ISSUANCE.**

A search warrant relating to offenses involving controlled drugs and substances may be served at any time of the day or night if the Judge issuing the warrant is satisfied that there is probable cause to believe that grounds exist for the warrant and for its service at such time.

**3-10-114 EXECUTION OF SEARCH WARRANT WITHOUT NOTICE- SPECIAL DIRECTION IN WARRANT.**

Any officer authorized to execute a search warrant may, without notice of his authority or purpose, enter any structure, portion of a structure, or any vehicle, or anything by whatever means, including breaking therein, if the Judge issuing such warrant is

satisfied that there is probable cause to believe that if such notice were given the property sought in the case may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another, may result, and has included in the warrant a direction that the officer executing it shall not be required to give such notice.

**3-10-115 CONTROLLED DRUGS AND SUBSTANCES DEEMED TO BE CONTRABAND.**

All substances listed in this Chapter that are possessed, transferred, sold, or offered for sale in violation of the provisions of this Chapter shall be deemed contraband and seized and summarily forfeited to the Tribe. Similarly, all controlled substances which are seized or come into the possession of the Tribe, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the Tribe. All species of plants from which controlled substances may be derived, which have been planted or cultivated in violation of this Chapter, or of which the owner or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the Tribe.

**3-10-116 OTHER PROPERTY DECLARED CONTRABAND- DISPOSITION.**

Any funds or other things of value used for purposes of unlawful purchasing, attempting to purchase, distributing, or attempting to distribute any alcohol, controlled drug or substance and seized by law enforcement officers during the purchase, attempted purchase, distribution, or attempted distribution, is hereby declared contraband and shall be paid into law enforcement training funds or other funds to be used for further law enforcement purposes.

**3-10-117 PEYOTE EXEMPTION**

The provisions of this Chapter relating to the possession and distribution of peyote shall not apply to the use of peyote by members of the Native American Church in bona fide religious ceremonies of the church.

*As enacted February 20, 2015 via A05-15-172.*