

**TITLE THREE (3): CRIMINAL ACTIONS**

**CHAPTER ONE (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 TWO (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:

- A. When such offense occur in the presence of the arresting officer; or
- B. When the arresting officer shall have probable cause to believe that the person to be arrested has committed such an offense; or
- C. 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:

- A. The officer shall inform the person to be arrested of his/her rights prior to any custodial questioning.
- B. 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.
- C. 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.
- D. 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 THREE (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 FOUR (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:

- A. Whether the person has identified himself satisfactorily.
- B. 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.
- C. 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.
- D. 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**

- A. 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.
- B. To secure the person's release, the person must give a written promise to appear in Court as required by the citation.
- C. 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 seventy two (72) hours after the date of the citation, nor more than fifteen (15) days after the date of the citation.

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

- A. When completed by the officer, the citation shall serve as the complaint for purposes of prosecution.
- B. 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 FIVE (5): ARRAIGNMENTS, PLEAS AND TRIAL DATES**

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

As soon as reasonably possible after arrest, but not more than seventy two (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**

- A. 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.
- B. 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.
- C. 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.**

- A. 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.
- B. 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.
- C. 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 SIX (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 with 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**

- A. 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.
- B. 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.

- C. 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.
- D. 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.
- E. 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.
- F. 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.

1. 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.

2. 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:

a. Satisfactorily meet responsibilities for the care and support of the family.

b. Perform labor or services for the benefit of the Tribe.

c. Undergo available medical or psychiatric treatment.

d. Satisfactorily participate in a rehabilitation program, such as driver education or Alcoholics Anonymous.

e. Not possess firearms or other dangerous weapons.

f. Make restitution or reparation for any damage, loss or injury caused by the offense.

g. Not associate with individuals or groups of individuals designated by the Tribal Court.

h. Restriction from such areas or places as may be designated by the Tribal Court.

i. 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.

j. Not operate a motor vehicle.

k. Maintain a daily schedule as specified by the Tribal Court.

3. 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 SEVEN (7): CRIMINAL OFFENSES**

As Enacted and Adopted via Resolution A05-21-096 on 12/17/2020.

**DEFINITIONS GENERALLY**

**3-7-020 Definitions**

The following definitions shall be applicable in this Title:

- A. "Abuse" - The intentional or reckless infliction of bodily injury or pain, sexual abuse, mental anguish, unreasonable confinement, intimidation, financial exploitation, the willful deprivation by a custodian, guardian, parent or 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.
- B. "Act" or "action" - A bodily movement, whether voluntary or involuntary.
- C. "Another" - A person or persons other than the offender.
- D. "Benefit" - Gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.
- E. "Bodily Injury" - Any amount of physical pain, bodily harm, illness, or any impairment of physical condition.
- F. "Caretaker" - An individual who has the responsibility for the care of another person, either voluntarily, by contract, receipt of payment for care or by an order of a court of competent jurisdiction.
- G. "Causing Apprehension or Fear of Bodily Injury" - Any threat or physical act, which causes another person to reasonably fear immediate harm, injury or death to themselves or another.
- H. "Child" or "children" - Any individual or individuals under 18 years of age, unless a different age is specified.
- I. "Coercion" - To exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.
- J. "Concealed" - An is concealed if it is carried in such a manner as to not be discernible by the ordinary observation of a passerby. There is no requirement that there be absolute invisibility of the object, merely that it not be ordinarily discernible. A firearm or dangerous weapon is considered concealed if it is not secured, and is worn under clothing or carried in a bundle that is held or carried by the individual,

or transported in a vehicle under the individual's control or direction and available to the individual, including beneath the seat or in a glove compartment. A firearm or dangerous weapon is not considered concealed if it is:

1. Carried in a belt holster which is wholly or substantially visible or carried in a case designed for carrying a firearm or dangerous weapon and which is wholly or substantially visible.
  2. Locked in a closed trunk or luggage compartment of a motor vehicle.
  3. Carried in the field while lawfully engaged in hunting, trapping, or target shooting, whether visible or not.
  4. Carried by any person permitted by law to possess a handgun unloaded and in a secure wrapper from the place of purchase to that person's home or place of business, or to a place of repair, or back from those locations.
- K. "Conviction" - A judgment of conviction and sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a judge or legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.
- L. "Dangerous Weapon" - Any firearm, switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger, any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas or substance.
- M. "Debt bondage" - The status or condition of a debtor arising from a pledge by the debtor of the debtor's personal services or those of a person under the debtors control as a security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.
- N. "Deception" means to do any of the following:
1. Create or confirm in another an impression that is false and that the offender does not believe to be true.

2. Fail to correct a false impression that the offender previously has created or confirmed.
  3. Prevent another from acquiring information pertinent to the disposition of the property involved.
  4. Sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record.
  5. Promise performance that the offender does not intend to perform or knows will not be performed.
- O. "Elderly" - Any person who has reached the age of fifty (50) years and above.
- P. "Electronic communication" - Transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic, or photo-optical system. Any offense committed by use of electronic communication may be deemed to have been committed at either the place at which the electronic communication was made or at the place where the electronic communication was received.
- Q. "Exploitation" - The act or process of using any other person and/or their resources for another person's profit, advantage, gain, or for monetary or personal benefit without legal entitlement.
- R. "Family member or household member" - A relative within the first degree; a spouse; a former spouse; a person related within the first degree by marriage; any person who resides or has resided in the same residence within the year proceeding the alleged offense; persons who are or who were previously in a dating relationship; and persons who share a child in common.
- S. "Force" - Any physical action.
- T. "Forced labor or services" - Labor or services that are performed or provided by another individual and are obtained or maintained through any one or more of the following:
1. Threat, either implicit or explicit, scheme, plan, or pattern, or other action intended to cause the victim to believe that if they did not perform or provide the labor or services, that the victim or another individual would suffer bodily harm or physical restraint; that any fact tending or alleged fact tending to cause shame or to

subject any person to hatred, contempt, or ridicule would be exposed.

2. Physically restraining or threatening to physically restrain a person.
  3. Abuse or threatened abuse of the legal process.
  4. Knowingly destroying, concealing, confiscating, removing or possessing any actual or purported passport or other immigration document.
  5. Knowingly destroying, concealing, confiscating, removing, or possessing any actual or purported domestic documents such as driver's license, social security card, birth certificate, or legal documents proving identity or citizenship.
  6. Use of blackmail.
- U. "Harm" - Loss, disadvantage, or injury to the person affected; and includes loss, disadvantage, or injury to any other person in whose welfare the person affected is interested.
- V. "House of Prostitution" - Any place where prostitution is regularly carried on by a person under the control, management, or supervision of another.
- W. "Human Trafficking" - Either sex or labor trafficking.
- X. "Included Offense" - Any offense:
1. That is established by proof of the same or less than all the facts required to establish commission of the offense charged; or
  2. That consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or
  3. That differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission.
- Y. "Includes" - Should be read as if the phrase "but is not limited to" were also set forth.
- Z. "Juror" - A grand juror or juror and includes a person who has been drawn or summoned to attend as a prospective juror.
- AA. "Labor Trafficking" - Recruitment, transportation, transfer, harboring, enticement, providing, obtaining or receipt of a person over the age of 18 by any means (including electronic/telephonic), for the purpose of debt bondage, forced labor or services, slavery or practices similar to slavery.

- BB. "Mental Anguish" - To subject another person to fear, agitation, confusion, severe depression, or other forms of serious emotional distress through threats, harassment, or other forms of intimidating behavior.
- CC. "Minor" - Any person under the age of eighteen (18).
- DD. "Monetary injury" - The theft of funds or expending funds improperly.
- EE. "Neglect" - Means any of the following:
1. To leave undone or unattended to.
  2. To give little attention or respect to.
  3. The willful or un-willful 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 for another person's welfare, to provide food, shelter, clothing, or services necessary to maintain the physical or mental well-being of that person.
- FF. "Object" - Anything used in commission of an act other than the person or the actor.
- GG. "Obtain" means any of the following:
1. In relation to property, to bring about a transfer of interest or possession, whether to the offender or to another.
  2. In relation to labor or services, to secure the performance of the labor or service.
- HH. "Offender" - A person who has been or is liable to be arrested, charged, convicted, or punished for an offense.
- II. "Offense" - A crime for which a sentence of death, imprisonment or a fine is authorized.
- JJ. "Property" - A tangible or intangible thing of value. Property includes any of the following:
1. Real estate.
  2. Money.
  3. Commercial instruments.
  4. Admission or transportation tickets.
  5. Written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner.
  6. Things growing on, affixed to, or found on land and things that are part of or affixed to a building.

7. Utilities including electricity, gas, and water.
  8. Birds, animals, and fish that ordinarily are kept in a state of confinement.
  9. Food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof.
  10. Other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement.
  11. Electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.
- KK. "Property of another" - Real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.
- LL. "Prostitute" - Any person who engages in sexual activity for hire.
- MM. "Prostitution" - The performance for hire, or offering or agreeing to perform for hire, where there is an exchange of anything of value, or an offer to exchange anything of value for any of the following acts:
1. Sexual intercourse.
  2. Sexual contact.
- NN. "Prostitution Business" - Any business which derives funds from prostitution regularly carried on by a person under the control, management, or supervision of another.
- OO. "Restitution" - Any form of Traditional Restitution as defined in section 3-7-020(ZZ) or payment of a victim's documented cost for medical treatment, counseling, substance abuse treatment, or any other financial damage caused by the actions of the offender.
- PP. "Serious Bodily Injury" - Bodily injury that creates a substantial risk of death or which causes serious

disfigurement, unconsciousness, extreme pain, loss or impairment of the function of any bodily member or organ, a bone fracture, or impediment of air flow or blood flow to the brain or lungs.

QQ. "Sex Trafficking" - The recruitment, transportation, transfer, harboring, enticement, providing, obtaining or receipt of any sexual act, sexual contact or sexual intercourse from another person (including electronic/telephonic), for the purpose of prostitution or practices similar to prostitution.

RR. "Sexual Act" means any of the following:

1. Sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, anus, or vulva.
2. The use of an object which comes in contact with the victim's anus, vulva, or penis.
3. For the purposes of this definition, sexual contact between the penis and the vulva, the penis and the anus, any other portion of the human body and the anus or vulva, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.

SS. "Sexual Contact" - Any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts (genitalia, anus, groin, breast, inner thigh, or buttocks, etc.) of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires or with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

TT. "Sexual Intercourse" - Vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Penetration however slight, is sufficient to complete vaginal intercourse, anal intercourse or fellatio and does not require emission. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the complainant's body.

UU. "Slavery" - Controlling a person through force, fraud, or coercion to exploit said person.

VV. "Solicit" or "solicitation" - To command, authorize, urge, incite, request, or advise another to commit an offense.

WW. "Surreptitiously" - In a way that attempts to avoid notice or attention; secretly.

XX. "Tamper" - To interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

YY. "Threat" - A menace, however communicated, that does any of the following:

1. Inflicts physical harm on the person threatened or any other person or on property.
2. Subjects any person to physical confinement or restraint.
3. Commits a criminal offense.
4. Accuses a person of a criminal offense.
5. Exposes a person to hatred, contempt, or ridicule.
6. Harms the credit or business repute of a person,
7. Reveals information sought to be concealed by the person threatened.
8. Takes action as an official against anyone or anything, withholds official action, or causes the action or withholding.
9. Brings about or continues a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent.
10. Testifies or provides information or withholds testimony or information with respect to another's legal claim or defense.

ZZ. "Traditional restitution" is defined as any customary or traditional compensation, as determined by judicial notice, as part of a custom-law finding or a tribal judge following custom-law finding hearing; or as directed by a formally established custom law advisory board and certified to the sitting judge.

## CULPABILITY AND INTENT

### **3-7-025 Culpability and Intent**

Unless otherwise stated in the specific language of a specific criminal offense, the specific intent and/or culpability of a criminal offense shall be intentionally, knowingly, willfully OR purposely.

A. For the purposes of this title, a person engages in conduct:

1. "Intentionally" if it is their purpose to do so.
2. "Knowingly" if they know or have a firm belief, unaccompanied by substantial doubt, that they are doing so, whether or not it is their purpose to do so.
3. "Purposely" if they have a conscious object to engage in conduct of that nature or to cause such a result.
4. "Recklessly" if they engage in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct. Reckless conduct shall include any conduct meeting the above definition as well as any intentional, knowing, willful or purposeful conduct.
5. "Negligently" if they engage in the conduct with an unreasonable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable community standards of conduct.
6. "Willfully" if they engage in the conduct intentionally, knowingly, or recklessly.

B. Except as otherwise expressly provided, where culpability is required, that kind of culpability is required with respect to every element of the conduct and to the other elements or circumstances specified in the definition of the offense, except that where the required culpability is "intentionally", the culpability required as to an attendant circumstance is "knowingly".

C. Except as otherwise expressly provided, if conduct is an offense if it causes a particular result, the required degree of culpability is required with respect to the result.

D. Any lesser degree of required culpability is satisfied if the proven degree of culpability is higher.

E. Causation may be found where the result would not have occurred but for the conduct of the accused operating either alone or concurrently with another.

## SENTENCING PROVISIONS

### **3-7-030 Minimum Sentencing**

Unless otherwise stated in the specific language for a specific criminal offense, there shall be no mandatory minimum sentence for a criminal offense enumerated in this Code.

### **3-7-035 Maximum Sentencing**

Unless otherwise stated in the specific language for a specific criminal offense, the maximum sentence for any criminal offense shall be one (1) year in jail, a five thousand dollar (\$5000) fine or both plus restitution and/or court costs.

### **3-7-040 Repeaters - Sentencing Enhancer**

Notwithstanding other maximum and minimum sentences outlined in this Code, any person convicted four (4) or more times of the same criminal offense may be considered a repeat offender and upon the fourth or subsequent conviction, may be sentenced up to one (1) year in jail, a five thousand dollar (\$5000) fine or both, plus restitution and/or court costs.

## INCHOATE OFFENSES & ACCOMPLICE LIABILITY

### **3-7-050    Accomplices**

- A. A person may be convicted of an offense based upon the conduct of another person when any of the following apply:
1. Acting with the kind of culpability required for the offense, he causes the other to engage in such conduct.
  2. With intent that an offense be committed, he commands, induces, procures, or aids the other to commit it, or, having a statutory duty to prevent its commission, he fails to make proper effort to do so.
  3. He is a co-conspirator and his association with the offense meets the requirements of either of the other subdivisions of this subsection.
- B. A person is not liable under this subsection for the conduct of another person when he is either expressly or by implication made not accountable for such conduct by the statute defining the offense or related provisions because he is a victim of the offense or otherwise.
- C. Unless otherwise provided, in a prosecution in which the liability of the defendant is based upon the conduct of another person, it is no defense that any of the following apply:
1. The defendant does not belong to the class of persons who, because of their official status or other capacity or characteristic, are by definition of the offense the only persons capable of directly committing it.
  2. The person for whose conduct the defendant is being held liable has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.
- D. A person convicted as an accomplice shall be punished not to exceed the maximum provided for in the underlying offense.

### **3-7-055    Criminal Attempt**

- A. A person is guilty of criminal attempt if, acting with the kind of culpability otherwise required for the commission of a crime, he intentionally engages in conduct which constitutes a substantial step toward commission of the crime.
- B. A "substantial step" is any conduct which is strongly corroborative of the firmness of the actor's intent to complete the commission of the crime.

- C. If the crime could have been committed had the attendant circumstances been as the actor believed them to be, factual or legal impossibility of committing the crime is not a defense.
- D. A person convicted of criminal attempt shall be punished not to exceed the maximum provided for in the underlying offense.

**3-7-060 Criminal Conspiracy**

- A. A person commits conspiracy if he agrees with one or more persons to engage in or cause conduct which constitutes an offense or offenses and any one or more of such persons does an overt act to affect an objective of the conspiracy. The agreement need not be explicit but may be implicit in the fact of collaboration or existence of other circumstances.
- B. A conspiracy shall be deemed to continue until its objectives are accomplished, frustrated, or abandoned.
- C. A conspiracy shall be deemed abandoned if no overt act to affect its objectives has been committed by any conspirator during the applicable period of limitations.
- D. It is no defense to a prosecution under this section that the person with whom such person is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.
- E. A person convicted of a criminal conspiracy shall be punished not to exceed the maximum provided for in the underlying offense.

**3-7-065 Criminal Solicitation**

- A. A person commits the offense of solicitation when, with the purpose that an offense be committed, the person commands, encourages, or facilitates the commission of that offense.
- B. A person convicted of solicitation shall be punished not to exceed the maximum provided for the offense solicited.

**OFFENSES AGAINST THE PERSON**

**3-7-100 Abduction**

Any person who shall take away or detain another person against their will or without the consent of the parent or other person having lawful care or charge of that person shall be guilty of an offense.

**3-7-105 Assault**

Any person who shall threaten death or bodily injury to another person or their family member or who shall attempt to cause bodily injury to another person or their family member shall be guilty of an offense.

**3-7-110 Assault And Battery**

Any person who shall strike another person or otherwise inflict bodily injury upon another person shall be guilty of an offense.

**3-7-115 Contact By Bodily Fluids Or Excrement**

A person is guilty of an offense if the individual causes blood, emesis, excrement, mucus, saliva, semen, vaginal fluid, or urine to come in contact with another person unless the other person is performing an act within the scope of their employment which requires or causes the contact.

**3-7-120 Harassment**

- A. A person is guilty of an offense if, with intent to frighten, cause annoyance, cause undue worry or upset to another person, they:
1. Communicate in writing or by electronic communication a threat to inflict injury on any person, to any person's reputation, or to any property; or
  2. Make a telephone call anonymously or in offensively coarse language; or
  3. Make repeated telephone calls or other electronic communication, whether or not a conversation ensues, with no purpose of legitimate communication; or
  4. Communicate a falsehood in writing or by electronic communication.
- B. A person is guilty of an offense if the person initiates communication with a 911 emergency line, public safety answering point, or an emergency responder communication system with the intent to annoy or harass another person or a public safety agency or make a false report to a public safety agency.

- C. Intent to annoy or harass is established by proof of one or more calls with no legitimate emergency purpose.
- D. Upon conviction of a violation of this subsection, a person may also be held liable for all costs incurred by any unnecessary emergency response.
- E. Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, or other similar means.

**3-7-125 Homicide in the First Degree**

- A. Any person who shall intentionally or knowingly cause the death of another human being shall be guilty of an offense.
- B. The statute of limitations or time limit for the filing of a criminal complaint charging a violation of this section shall be four (4) years from the date of the alleged offense.

**3-7-130 Homicide in the Second Degree**

- A. It shall be an offense to do any of the following:
  - 1. Recklessly or negligently cause the death another human being.
  - 2. Cause the death of another human being due to the commission or attempted commission of a criminal offense.
  - 3. 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 any alcoholic beverage, intoxicating liquor, controlled drug and/or any other substance(s).
    - a. A blood alcohol content in excess of 0.08% 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, ATV, UTV, farm implement or snow mobile.
    - c. If it can be proven that the person charged with this offense was under the influence of a controlled drug and/or any other substance(s) to a degree which rendered the person incapable of safely operating the motor vehicle, it shall be no defense that the person had a valid prescription for said controlled drug or substance(s).

- B. The statute of limitations or time limit for the filing of a criminal complaint charging a violation of this section shall be four (4) years from the date of the alleged offense.

**3-7-135 Libel**

Any person who purposely or willfully, by the use of any false 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 an offense.

**3-7-140 Reckless Endangerment**

Any person who shall willfully engage in conduct that places or may place another human being in danger of death or serious bodily injury shall be deemed guilty of an offense.

**3-7-145 Slander**

Any person who purposely or willfully, 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 an offense.

**3-7-150 Stalking**

- A. Any person who purposely or willfully engages in an intentional course of conduct, as evidenced by two or more acts directed at a specific person, which frightens, intimidates or harasses that person shall be deemed guilty of an offense.
- B. It shall not be required that the individual be on actual notice that the conduct is unwanted nor shall it be required that the individual intend to frighten, intimidate or harass the person.
- C. Law enforcement officers and licensed private investigators shall be exempt from this provision.

**3-7-155 Surreptitious Intrusion**

An individual is guilty of an offense if that individual does any of the following:

- A. Enters upon another's property and surreptitiously gazes, stares, or peeps into a house or place of dwelling of another.

- B. Enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a house or place of dwelling of another.
- C. Surreptitiously gazes, stares or peeps into a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.
- D. Surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.
- E. Surreptitiously installs or uses any device for observing, photographing, recording, amplifying or broadcasting sounds or events involving another engaged in a sexual act, sexual contact, sexual intercourse or the exposure of another individual's intimate parts without the consent of the other individual.

### **3-7-160 Terrorizing**

Any person who, with intent to place another human being in fear for that human being's or another's safety or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious disruption or public inconvenience, or in reckless disregard of the risk of causing such terror, disruption, or inconvenience, is guilty of an offense if the person they do any of the following:

- A. Threaten to commit any crime of violence or act dangerous to human life.
- B. Falsely informs another that a situation dangerous to human life or commission of a crime of violence is imminent knowing that the information is false.

### **3-7-165 Transmitting a Communicable Disease**

Any person who shall intentionally or recklessly infect another person with any communicable disease shall be guilty of an offense.

### **3-7-170 Violence to a Government Official or Employee**

Any person who shall threaten bodily injury to or render physical aggression towards any Police Officer, Councilperson,

Tribal Court Official or other Government employee shall be guilty of an offense.

## OFFENSES AGAINST PROPERTY

### **3-7-200 Arson**

A person is guilty of an offense if they do any of the following:

- A. Purposely or willfully burn or set on fire any lands, buildings, possessions or property of another.
- B. Willfully set a fire manifestly dangerous to any human or animal life.
- C. Purposely or willfully burn or set on fire any lands, buildings possessions or property belonging to themselves for purpose of defrauding an insurance company.

### **3-7-205 Breaking and Entering**

Any person who uses any force whatsoever to enter into or onto any lands, buildings, property, dwellings, residence or possession owned by another person, entity or the Tribe shall be guilty of an offense.

### **3-7-210 Cruelty to Animals**

- A. A person commits an offense if, without justification, the person knowingly or negligently subjects an animal to mistreatment or neglect by doing any of the following:
  - 1. Overworking, beating, tormenting, torturing, injuring, or killing the animal.
  - 2. Carrying or confining the animal in a cruel manner.
  - 3. Abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge.
  - 4. Failing to provide an animal in the person's custody with any of the following:
    - a. Food and water of sufficient quantity and quality to sustain the animal's normal health.
    - b. Minimum protection for the animal from adverse weather conditions, with consideration given to the species.
    - c. In cases of immediate, obvious, serious illness or injury, licensed veterinary or other appropriate medical care.
- B. Any person convicted of the offense of cruelty to animals 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.

C. This section does not prohibit any of the following:

1. A person humanely destroying an animal for just cause.
2. The use of commonly accepted agricultural and livestock practices on livestock.
3. Rodeo activities that meet humane standards of the Professional Rodeo Cowboys Association.
4. Lawful fishing, hunting, and trapping activities.
5. Lawful wildlife management practices.
6. Lawful scientific or agricultural research or teaching that involves the use of animals.
7. Services performed by a licensed veterinarian.
8. Lawful control of rodents and predators and other lawful animal damage control activities.
9. Accepted training and discipline methods.

**3-7-215 Cutting or Damaging of Fence**

Any person who shall cut or otherwise damage the fence belonging to another person shall be guilty of an offense and may be sentenced up to sixty (60) days in jail, a one thousand dollar (\$1000) fine or both, plus restitution and/or court costs.

**3-7-220 Malicious Mischief**

Any person who shall maliciously disturb, injure, damage or destroy any livestock, domestic animal or other property belonging to another shall be guilty of an offense.

**3-7-225 Trespass**

Any person who shall go upon, pass over or occupy any lands or property of another without permission or who shall intentionally or recklessly allow their livestock to go upon, pass over or occupy any lands or property of another without permission shall be guilty of an offense and may be sentenced up to forty-five (45) days in jail, a five hundred dollar (\$500) fine or both, plus restitution and/or court costs.

**3-7-230 Unauthorized Leasing**

Any person who leases their land in violation of the existing leasing regulations shall be guilty of an offense and may be sentenced up to thirty (30) days in jail, a five hundred dollar (\$500) fine or both, plus restitution and/or court costs.

**3-7-240 Unauthorized Use or Damage to Public Property**

Any person, without proper authority to do so, who shall use, injure or damage any public, government or Tribal property shall be guilty of an offense.

**THEFT AND RELATED OFFENSES**

**3-7-300    Disposing of the Property of an Estate**

Any person who sells, trades or otherwise disposes of any property of an estate before the determination of the heirs without the proper authority to do so shall be guilty of an offense.

**3-7-305    Embezzlement**

- A. Any person, having lawful custody of property not belonging to them, who shall appropriate or use the property with the intent to deprive the owner of the use or possession of the property shall be guilty of an offense.
- B. Embezzlement shall include the spending of a minor's or ward's funds by a parent or guardian without a Tribal Court Order for purposes other than the education, medical care or general well-being and benefit of the minor or ward.

**3-7-310    Forgery**

Any person who shall falsely sign, execute or alter any written instrument with the intent to defraud or deceive another shall be guilty of an offense.

**3-7-315    Fraud**

Any person who shall obtain any money or other property by misrepresentation, deceit, false interpreting or the use of false weights and/or measures shall be guilty of an offense.

**3-7-320    Illegal or Unauthorized Sale or Purchase of any Trust or Other Property Furnished or Made Available Under Government Sponsored Programs.**

- A. Any person who wrongfully or illegally sells, buys, appropriates or disposes of any trust property or other property made available and/or furnished pursuant to any government approved program shall be guilty of an offense.
- B. Upon request, the Tribal Court shall certify the record and proceedings and provide a copy to the Spirit Lake Tribal Council or the requesting agency/program for future consideration in the administration of tribal programs.

**3-7-325    Misbranding**

Any person who shall knowingly misbrand or alter any brand or mark on any livestock belonging to another person shall be guilty of an offense.

**3-7-330 Receiving Stolen Property**

Any person who shall knowingly receive, conceal or aid in the concealing and/or receipt of property obtained by theft, fraud, false pretense, robbery, burglary or embezzlement shall be guilty of an offense.

**3-7-335 Theft**

Any person who shall, without the permission of the owner, take the property of another with the intent of depriving that person of the temporary or permanent possession of that property shall be guilty of an offense.

**3-7-340 Unauthorized Use of a Motor Vehicle**

Any person who shall take, drive or operate another person's motorized vehicle without the consent of the owner and with the intent to temporarily deprive the owner of its use and/or possession shall be guilty of an offense.

**OFFENSES AGAINST OR INVOLVING CHILDREN, FAMILY OR OTHER  
VULNERABLE PERSONS**

**3-7-400 Bullying**

A person is guilty of an offense if they engage in any physical or verbal act or conduct, including communications made in writing or electronically, which is directed toward a student or students and that have or can reasonably be predicted to have the effect of any of the following:

- A. Placing the student(s) in reasonable fear of harm to the student(s) person or property.
- B. Causing a detrimental effect on the student(s)' physical or mental health.
- C. Interfering with the student(s)' academic performance.
- D. Interfering with the student(s)' ability to participate in or benefit from the services, activities or privileges provided by the school.

**3-7-405 Causing the Death of an Unborn Child**

A person is guilty of an offense if they do any of the following:

- A. Intentionally, Knowingly, Purposefully, Willingly, Recklessly or Negligently cause the death of an unborn child.
- B. Cause the death of an unborn child under circumstances manifesting extreme indifference to the value of the life of the unborn child or the pregnant woman.

**3-7-410 Child Abuse**

- A. Any person who inflicts mental injury, mental anguish, bodily injury, emotional harm, emotional injury, or who commits any sexual act or offense upon any child who is under the age of eighteen (18) age of years shall be guilty of this offense.
- B. The statute of limitations or time limit for the filing of a criminal complaint charging a violation of this section shall be four (4) years from the date of the alleged offense.

**3-7-415 Child Neglect**

It shall be unlawful for any person having custody, guardianship or other physical charge of a minor to do any of the following:

- A. Fail to provide proper parental care, parental control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals.

- B. Permit the child to be or fail to exercise reasonable diligence in preventing the child from being in a disreputable place or associating with vagrants or vicious or immoral persons.
- C. Permit the child to engage in or fail to exercise reasonable diligence in preventing the child from engaging in, an occupation forbidden by the laws of the Tribe or an occupation injurious to the child's health or morals or the health or morals of the Tribe.

**3-7-420 Contributing to the Delinquency of a Minor**

Any person who shall, by act or omission, encourage, cause or otherwise contribute to the unlawful conduct of a person under the age of 18 years shall be guilty of an offense.

**3-7-425 Curfew Violation**

- A. Any juvenile person who appears in a public place or any place that is not his/her legal residence between the hours of 10:00 PM and 6:00 AM unless they are accompanied by a parent, guardian or other person having physical charge of the minor or unless the minor is 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 up to ninety (90) days in jail, a fifty dollar (\$50) fine or both, plus restitution and/or court costs.
- B. In lieu of jail time, the juvenile may be sentenced to suspended jail time and probation for a period of up to one (1) year under terms and conditions deemed appropriate by the Spirit Lake Tribal Court Judge. The Judge may also order the parent(s) or legal guardian(s) to be legally responsible for supervising the minor during the probationary period.

**3-7-430 DOMESTIC ABUSE**

- A. A person commits an offense if he or she purposely or willfully causes bodily injury or apprehension of bodily injury to a family member or household member.

**B. Arrest**

1. A law enforcement officer may arrest a person, anywhere, with or without a warrant, including a person's residence, if the officer has probable cause to believe that Domestic Abuse has occurred.
2. The officer, under this ordinance, is not required to arrest both parties when it is believed the parties have assaulted one another. The officer, in his/her discretion, may arrest the person he/she believes is the primary

aggressor. 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; and
- b. The extent of injuries inflicted or the seriousness of the threats which allegedly caused fear or apprehension of bodily injury; and
- c. The previous history of domestic abuse between the persons involved.

**C. Twelve (12) Hour Hold - Non-Alcohol Related.** Any person arrested under this section shall be held without bail for a period of at least twelve (12) hours, as a mandatory cooling down period.

**D. 24 Hour Hold - Alcohol Related.** Any person arrested under this section who is under the influence of alcohol shall be held without bail for a period of at least twenty-four (24) hours, as a mandatory cooling down period.

**E.** If the offender and victim are husband and wife, any spousal communication privilege shall not apply in domestic abuse cases.

**F. Notice of Rights.** The responding 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.

**G. Penalties.** The purpose of this section shall be to deter all Domestic Abuse on the Spirit Lake Nation and to promote the healing of families whenever possible.

1. A person convicted of a first offense of Domestic Abuse shall be imprisoned for not less than fifteen (15) days. The court shall require mandatory counseling as a part of the sentence. Such counseling may include but is not limited to: alcohol/drug counseling, anger management counseling, domestic abuse counseling and/or family counseling. Persons who practice traditional religion shall be entitled to counseling by traditional healing methods recognized in the community as such.
2. A person convicted of a second offense of Domestic Abuse shall be imprisoned for not less than thirty (30) days. The mandatory counseling set forth in subsection one (1) shall also apply as well as the traditional healing methods.

3. A person convicted of a third offense of domestic abuse shall be imprisoned for not less than ninety (90) days. The mandatory counseling set forth in subsection one (1) shall also apply as well as the traditional healing methods.
4. A person convicted of a fourth or subsequent offense of domestic abuse shall be imprisoned for not less than one hundred eighty (180) days. The mandatory counseling set forth in subsection one (1) shall also apply as well as the traditional healing methods.

### **3-7-435 Elderly Abuse**

- A. A person commits criminal Elderly Abuse if he or she does any of the following:
1. Purposely or willfully causes emotional harm, bodily injury or monetary injury to an elderly person.
  2. Purposely or willfully causes apprehension of bodily injury to an elderly person.
  3. Purposely or willfully abuses, neglects, or exploits an elderly person.

### **B. Sentencing and Penalties**

1. Any person convicted of a first offense of Elderly Abuse shall be imprisoned for not less than sixty (60) days.
2. A person convicted of a second offense of Elderly Abuse shall be imprisoned for not less than ninety (90) days.
3. A person convicted of a third or subsequent offense of Elderly Abuse shall be imprisoned for not less than one hundred eighty (180) days.

### **3-7-440 Endangering an Unborn Child**

A person is guilty of an offense if they intentionally, purposely, knowingly, willfully, recklessly or negligently engage in conduct that is likely to endanger the life, health and/or well-being of an unborn child.

### **3-7-445 Failure to Send Children to School**

Any person who, without good cause, shall neglect or refuse to send his/her minor child(ren) or any other minor child(ren) who are under his/her care to school shall be guilty of this offense.

### **3-7-450 Failure to Supervise a Minor**

A. A person is guilty of an offense if:

1. They are the parent, guardian or person having physical charge of a minor; AND
  2. They willfully or recklessly allow the minor to be away from the minor's place of residence after curfew hours in a public or private place that is not the place where the minor intends to spend the night with the permission of the parent or guardian and the owner of the residence.
- B. This offense does not apply to circumstances where the minor is in attendance at or returning directly home from an organized school, church or Tribal function.
- C. Any person found guilty of this offense may be sentenced up to ninety (90) days in jail, a two hundred fifty dollar (\$250) fine or both, plus restitution and/or court costs.

**3-7-455 Failure to Support Dependent Persons or Abandonment**

Any person who shall neglect to provide good shelter or care to those dependent upon him/her, neglect to properly expend funds awarded for the care and support of their dependents or otherwise abandon their dependents to be cared for by someone else shall be guilty of an offense.

## OFFENSES AGAINST PUBLIC ORDER

### **3-7-500 Aiding And Abetting**

Any person who shall assist, advise or encourage another in the commission of a criminal offense shall be guilty of an offense.

### **3-7-505 Bribery**

A person is guilty of an offense if they do any of the following:

- A. They give or offer to give money, property, services or anything else of value to another person with the intent to influence another in the discharge of their public duties.
- B. They accept, solicit or attempt to solicit any bribe.
- C. They give or offer to give money, property, services or anything else of value to another person with the intent to influence another to cast a ballot or otherwise vote a particular way in an election.

### **3-7-510 Carrying a Concealed Weapon**

- A. Any person present in a public place, including an automobile on a roadway, armed with a dangerous weapon concealed upon his/her person or in his/her possession without a valid Concealed Weapons Permit issued by a Tribal, State or Federal government entity shall be guilty of an offense.
- B. When the "dangerous weapon" is a knife or sharp blade, the blade portion must measure at least 4 inches long.

### **3-7-515 Cutting Green Timber Without a Permit**

Unless done for the personal use of the allottee, any person who shall cut any standing green timber off an Indian Trust Allotment without a proper permit shall be guilty of an offense and may be sentenced up to thirty (30) days in jail, a one thousand dollar (\$1000) fine or both, plus restitution and/or court costs.

### **3-7-520 Deer Shining**

Any person who shall hunt any deer during the hours between a half hour after sunset and a half hour before sunrise or who shall shine a light upon any woods or fields where deer may be found while in possession of a firearm shall be guilty of an offense and may be sentenced up to sixty (60) days in jail, a five hundred dollar (\$500) fine or both, plus restitution and/or court costs.

### **3-7-525 Disorderly Conduct**

- A. Any person who shall cause public or private inconvenience, annoyance, alarm or harassment by doing any of the following shall be guilty of an offense:
1. Engaging in fighting or threatening to engage in fighting or any other violent or tumultuous behavior.
  2. Making unreasonable noise, offensively coarse utterances, gestures or displays.
  3. Addressing abusive language to any person in a public place.
  4. Creating a hazardous or physically offensive condition by any act which serves no legitimate purpose.
  5. Appearing in a public place in an intoxicated condition and doing any of the following:
    - a. Passing out or falling asleep in a public place or on the property of another without permission.
    - b. Bothering, disrupting or otherwise intruding upon another person or group of persons.
    - c. Wandering about without being able to give a reasonable account of a destination to a law enforcement officer.
    - d. Appearing or being found in an area set aside for religious, ceremonial or public activity.
- B. The maximum sentence for a first (1<sup>st</sup>) offense is 3 months in jail, a five hundred dollar (\$500) fine or both, plus restitution and/or court costs.
- C. The maximum sentence for a second (2<sup>nd</sup>) or subsequent offense is six (6) months in jail, a one thousand dollar (\$1000) fine or both, plus restitution and/or court costs.
- D. This section does not apply to protected activity under the Indian Civil Rights Act. If an individual claims to have been engaged in a protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

### **3-7-530 Extortion**

A person is guilty of an offense if they obtain or attempt to obtain any money, goods, property or anything else of value by doing any of the following:

- A. Threatening to make false charges or claims against another.
- B. Threatening to commit a criminal offense against another.

- C. Threatening to expose any secret tending to subject any person to hatred, contempt or ridicule or to impair their credibility or business reputation.
- D. Threatening to take or withhold action as a governmental or Tribal official or cause a governmental or Tribal official to take or withhold action.
- E. Threatening to testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

**3-7-535 Littering**

A person is guilty of an offense if he/she disposes, dumps, throws, discards, litters, scatters, places, deposits, releases or leaks any solid, liquid, junk, garbage or hazardous waste in any location, other than an approved waste container, collection, storage, treatment or disposal area.

**3-7-540 Operating a Dance Hall**

Any person or group of persons who operates or maintains a public dance hall within the exterior boundaries of the Spirit Lake Nation without a permit issued by the Tribe or in violation of the terms of the permit shall be guilty of this offense and may be sentenced up to thirty (30) days in jail, a five hundred dollar (\$500), or both, plus restitution and/or court costs.

**3-7-545 Public Nuisance**

Any person who shall act in such a manner or fail to perform any lawful duty that results in any of the following shall be guilty of an offense:

- A. Unreasonably and substantially annoys, injures or endangers the comfort, health or safety of two (2) or more persons.
- B. Offends public decency.
- C. Unlawfully interferes with, obstructs, tends to obstruct or render dangerous for use or passage any lake, stream, campground, pow-wow ground, public park, street, highway or roadway shall be guilty of this offense.

**3-7-550 Persons Prohibited from Possessing Dangerous Weapons**

A person is guilty of an offense if they are found in possession of any dangerous weapon and are prohibited from possessing such weapon by the laws of or any order of any Tribal, State or Federal government entity.

**OFFENSES AGAINST PUBLIC ADMINISTRATION**

**3-7-600 Bail Jumping**

Any person who fails to appear in Court as required after being released pursuant to any bond, bail or promise to appear is guilty of an offense.

**3-7-605 Disobedience to a Lawful Order of any Court or the Tribal Council**

Any person who shall disobey any resolution, order, subpoena, summons, warrant or command lawfully issued by any Court of competent jurisdiction, Tribal Council or any officer thereof shall be guilty of an offense.

**3-7-610 Escape**

Any person who shall escape, attempt, permit or assist another person to escape from the lawful custody of the Tribal Court, the Fort Totten Police Department or any other Tribal, State or Federal government entity shall be guilty of an offense. This offense shall also apply to the action(s) of an individual who fails to return to lawful custody after being granted temporary release.

**3-7-615 Failure to Stop or Fleeing an Officer**

Any person who fails to stop or flees from a Law Enforcement Officer after the Law Enforcement Officer has requested that individual to stop by oral command or by display of proper law enforcement authority shall be guilty of an offense.

**3-7-620 False Arrest**

Any person who shall cause the unlawful arrest, detention or imprisonment of another person shall be guilty of an offense.

**3-7-625 False Information**

Any person who provides false information to a law enforcement officer during the course of a lawful investigation shall be deemed guilty of an offense.

**3-7-630 Fraudulent Practices In Drug Testing**

A person is guilty of an offense if they do any of the following:

- A. Willfully alter, adulterate or defraud a drug test or assist another in altering, adulterating or defrauding a drug test and the test is designed to detect the presence of a chemical substance or a controlled substance.
- B. Knowingly possess, distribute, use, or assist another in the use of any device, chemical, or real or artificial urine

advertised or intended to be used to alter the outcome of a drug test.

### **3-7-635 Harassment of and Communication with Jurors**

- A. A person is guilty of an offense if they do any of the following:
1. With intent to influence the official action of another as a juror, that person communicates directly or indirectly with the juror, other than as part of the proceedings in a case, or harasses or alarms the juror.
  2. With the intent to harass or annoy a former juror because of the verdict returned by the jury or the participation of the juror in the verdict, that person communicates directly or indirectly with the juror in a manner that intimidates the juror or conveys a threat of injury or damage to the juror's property or person.
- B. Conduct directed against the juror's spouse or other relative residing in the same household with the juror shall be deemed conduct directed against the juror.

### **3-7-640 Hindering Law Enforcement**

A person is guilty of an offense if they intentionally interfere with, hinder, delay, or prevent the discovery, apprehension, prosecution, conviction, or punishment of another person for an offense by doing any of the following:

- A. Harboring or concealing another person.
- B. Providing another person with a weapon, money, transportation, disguise, or other means of avoiding discovery or apprehension.
- C. Concealing, altering, mutilating, or destroying a document or thing, regardless of its admissibility in evidence.
- D. Warning another person of impending discovery or apprehension other than in connection with an effort to bring another person into compliance with the law.
- E. Giving false information or a false report to a law enforcement officer knowing such information or report to be false.

### **3-7-645 Impersonating Officials**

- A. A person is guilty of an offense if he falsely pretends to be:
1. A public servant, other than a law enforcement officer, and acts as if to exercise the authority of such public servant.

2. A public servant or a former public servant and thereby obtains a thing of value.

3. A law enforcement officer.

B. It is no defense to prosecution under this section that the pretended capacity did not exist or the pretended authority could not legally or otherwise have been exercised or conferred.

### **3-7-650 Incarcerated or Other Persons Refusing Drug or Alcohol Testing**

It is recognized by the Spirit Lake Tribe that incarcerated persons and especially persons who have been convicted of a crime and who are serving sentences do not enjoy the same protections afforded by the Indian Civil Rights Act or the Fourth (4<sup>th</sup>) Amendment to the United States Constitution as persons who are not incarcerated. Therefore:

A. Any person who is incarcerated pursuant to any criminal judgment is subject to drug and alcohol testing at the discretion of the Court and the correctional facility in which they are serving their time. Any such person who refuses drug and/or alcohol testing after being asked to submit to testing by any Law Enforcement Officer, Correctional Officer, Probation Officer or the Court shall be guilty of an offense.

B. Any person incarcerated pursuant to any drug or alcohol related offense and who has been given a bond after being formally charged and seen by a judge is subject to drug and alcohol testing at the discretion of the Court and the facility in which they are being held. Any such person who refuses drug and/or alcohol testing after being asked to submit to testing by any Law Enforcement Officer, Correctional Officer, Probation Officer or the Court shall be guilty of an offense.

C. Any incarcerated or other person who refuses drug and/or alcohol testing after being presented with a search warrant issued upon a finding of probable cause shall be guilty of an offense.

### **3-7-655 Obstruction of a Government Function**

A. Any person who intentionally obstructs, impairs, impedes, hinders, prevents, or perverts the administration of law or other governmental function is guilty of an offense.

B. This section does not apply to the conduct of a person obstructing the arrest of himself and/or others which may be punishable elsewhere in this Code.

C. It is a defense to a prosecution under this section that the administration of law or other government function was not lawful. However, it is no defense that the defendant mistakenly believed that the administration of law or other government function was not lawful. For the purposes of this subsection, the conduct of a public servant acting in good faith and under color of law shall be deemed lawful.

**3-7-660 PERJURY**

Any person who shall make a sworn statement under oath or by affidavit knowing that the statement is untrue or who shall induce or procure another to do the same shall be guilty of an offense.

**3-7-665 Preventing Arrest Or Discharge Of Other Duties**

A. Any person who does any of the following with the intent to prevent a public servant from effecting an arrest of himself or another, or from discharging any other official duty is guilty of an offense:

1. Creates a substantial risk of bodily injury to the public servant or to anyone except himself.
2. Employs means justifying or requiring force to overcome resistance to effecting the arrest or the discharge of the duty.

B. It is a defense to a prosecution under this section that the public servant was not acting lawfully. However, it is no defense that the defendant mistakenly believed that the public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully

**3-7-670 Resisting Lawful Arrest**

Any person who shall resist or assist another person to resist a lawful arrest shall be guilty of an offense.

**3-7-675 Tampering With Witnesses Or Information**

A. A person is guilty of an offense if they do any of the following:

1. Use threat, force, deception or bribery in an attempt to influence any witness, informant, potential witness or potential informant of any judicial or official government proceeding to do any of the of the following:
  - a. Testify falsely.
  - b. Withhold any testimony, information, document or other evidence.

- c. Avoid legal process summoning him/her to testify or supply evidence.
    - d. Absent himself from any judicial or official proceeding to which he has been legally summoned.
  - 2. They solicit, accept, or agree to accept from another a thing of pecuniary value as consideration for any of the following:
    - a. Influencing the actor's testimony in an official proceeding.
    - b. The actor's engaging in the conduct described in paragraphs 1 through 4 of subdivision A.
- B. It is a defense to a prosecution under this section for use of threat with intent to influence another's testimony that the threat was not of unlawful harm and was used solely to influence the other to testify truthfully.
- C. In a prosecution under this section based on bribery, it shall be an affirmative defense that any consideration for a person's refraining from instigating or pressing the prosecution of an offense was to be limited to restitution or indemnification for harm caused by the offense.
- D. It is no defense to a prosecution under this section that an official proceeding was not pending or about to be instituted.
- E. This section shall not be construed to prohibit the payment or receipt of witness fees provided by statute, or the payment, by the party upon whose behalf a witness is called, and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time spent in attendance at an official proceeding, or in the case of expert witnesses, a reasonable fee for preparing and presenting an expert opinion.

### **3-7-680 Tampering with Informants in Criminal Investigations**

A person is guilty of an offense if, believing another may have information relating to an offense, they deceive another person or employ force, threat, or bribery with intent to hinder, delay, or prevent communication of such information to a law enforcement officer.

## SEXUAL CRIMES

### **3-7-700 Assault with Intent to Commit Rape, Sexual Assault or Any Other Sex Crime**

- A. Any person who shall assault another person with the intent to commit rape, sexual assault or any other sex crime as defined under this title shall be guilty of an offense.
- B. If the victim was a minor at the time the alleged offense occurred, there shall be no statute of limitations or time limit for the filing of a criminal complaint charging a violation of this section.
- C. If the victim was over the age of eighteen (18) at the time the alleged offense occurred, the statute of limitations or time limit for the filing of a criminal complaint charging a violation of this section shall be four (4) years from the date of the alleged offense.

### **3-7-705 Carnal Knowledge of a Person Under Sixteen (16) Years of Age**

- A. Any person who shall engage in a sexual act, sexual contact or sexual intercourse with any person under the age of sixteen (16) or who shall aid or permit another to engage in a sexual act, sexual contact or sexual intercourse with a person under the age of sixteen (16) shall be guilty of an offense.
- B. There shall be no statute of limitations or time limit for the filing of a criminal complaint charging a violation of this section.

### **3-7-710 Child Pornography**

A person is guilty of an offense if a person knowingly possesses any of the following:

- A. Any motion picture, photograph or other visual representation that includes a minor engaged in actual or simulated sexual act or contact.
- B. Any motion picture, photograph or other visual representation of a minor where the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of the minor.

### **3-7-715 Corruption or Solicitation of Minors**

- A. A person is guilty of an offense if that person is 18 years of age or older and does any of the following:
  - 1. Entices a minor who is under the age of 16 years of age to engage in a sexual act with the offender or another.

2. Engages in a sexual act with a minor who is under the age of 16 years of age.
  3. Solicits with the intent to engage in a sexual act with a minor who is who is under the age of 16 years of age.
  4. Causes another to engage in a sexual act with a minor who is under the age of 16 years of age.
- B. A person is guilty of an offense if that person is 20 years of age or older does any of the following:
1. Entices a minor who is 16 years of age or older to engage in a sexual act with the offender or another.
  2. Engages in a sexual act with a minor who is 16 years of age or older.
  3. Solicits with the intent to engage in a sexual act with a minor who is 16 years of age or older.
  4. Causes another to engage in a sexual act with a minor who is 16 years of age or older.

**3-7-720 Deviant Sexual Act**

A person is guilty of an offense if they engage in any form of sexual contact with an animal, bird or dead person.

**3-7-725 Gross Sexual Imposition**

- A. A person who engages in or causes another to engage in a sexual act with, or has sexual contact with or causes another to have sexual contact with another is guilty of an offense if any of the following apply:
1. They compel the victim to submit by force or threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being.
  2. That person knows or any reasonable person would believe that the individual's ability to consent has been impaired by a physical or mental disability or by the ingestion of alcohol, controlled substance(s), and/or any other mood or mind altering substance(s).
  3. That person knows or has reasonable cause to believe that the victim is unaware that a sexual act or sexual contact is being committed upon him or her.
  4. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.

- B. If the victim was a minor at the time the alleged offense occurred, there shall be no statute of limitations or time limit for the filing of a criminal complaint charging a violation of this section.
- C. If the victim was over the age of eighteen (18) at the time the alleged offense occurred, the statute of limitations or time limit for the filing of a criminal complaint charging a violation of this section shall be four (4) years from the date of the alleged offense.

**3-7-730 Incest**

- A. A person is guilty of an offense if they knowingly marry, intimately cohabit with or engage in a sexual act with another person related to them in any of the following ways:
  - 1. Parents and children, including grandparents and grandchildren of every degree.
  - 2. Brothers and sisters of the half as well as the whole blood.
  - 3. Uncles and nieces of the half as well as the whole blood.
  - 4. Aunts and nephews of the half as well as the whole blood.
  - 5. First cousins of the half as well as the whole blood.
- B. This section applies to legitimate as well as illegitimate children and relatives.

**3-7-735 Indecent Exposure**

A person, with intent to arouse, appeal to, or gratify that person's lust, passions, or sexual desires, is guilty of an offense if that person does any of the following:

- A. Masturbates in a public place or in the presence of a minor.
- B. Exposes one's penis, vulva, or anus in a public place or to a minor in a public or private place.
- C. Exposes one's penis, vulva, or anus by unsolicited electronic communication.
- D. Exposes one's penis, vulva, or anus by any electronic means to a minor.

**3-7-740 Luring Minors by Computer or Other Electronic Means**

An adult is guilty of luring minors by computer or other electronic means when:

- A. The adult knows the character and content of a communication that, in whole or in part, implicitly or explicitly discusses or depicts actual or simulated nudity, sexual acts, sexual

contact, sadomasochistic abuse, or other sexual performances and uses any computer communication system or other electronic means that allows the input, output, examination, or transfer of data or programs from one computer or electronic device to another to initiate or engage in such communication with a person the adult believes to be a minor; and

B. By means of that communication the adult importunes, invites, or induces a person the adult believes to be a minor to engage in sexual acts or to have sexual contact with the adult, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for the adult's benefit, satisfaction, lust, passions, or sexual desires.

### **3-7-745 Rape in the First Degree**

A. It shall be unlawful to do any of the following:

1. Compel another to submit to sexual intercourse by force or by the threat of death, bodily injury, extreme pain, or kidnapping to be inflicted on that person or anyone else.
2. Engage in sexual intercourse with a person under the age of fourteen (14), regardless of consent.

B. If the victim was a minor at the time the alleged offense occurred, there shall be no statute of limitations or time limit for the filing of a criminal complaint charging a violation of this section.

C. If the victim was over the age of eighteen (18) at the time the alleged offense occurred, the statute of limitations or time limit for the filing of a criminal complaint charging a violation of this section shall be four (4) years from the date of the alleged offense.

### **3-7-750 Rape in the Second Degree**

A. It shall be unlawful to do any of the following:

1. Compel another to submit to sexual intercourse by any threat that would prevent resistance by a person of ordinary resolution.
2. Engage in sexual intercourse with another when a reasonable person would believe that the individual's ability to consent has been impaired by a physical or mental disability or by the ingestion of alcohol, controlled substance(s), and/or any other mood or mind altering substance(s).
3. Engage in sexual intercourse with a person under the age of sixteen (16) but over the age of fourteen (14), regardless

of consent, the perpetrator being at least four (4) years older than the victim.

- B. If the victim was a minor at the time the alleged offense occurred, there shall be no statute of limitations or time limit for the filing of a criminal complaint charging a violation of this section.
- C. If the victim was over the age of eighteen (18) at the time the alleged offense occurred, the statute of limitations or time limit for the filing of a criminal complaint charging a violation of this section shall be four (4) years from the date of the alleged offense.

**3-7-755 Sexual Assault**

- A. A person is guilty of an offense if they do any of the following:
  - 1. They purposely or willfully engage in a non-consensual sexual act with or engage in non-consensual sexual contact with another person.
  - 2. They purposely or willfully engage in a sexual act with or engage in sexual contact with another person when a reasonable person would believe that the individual's ability to consent has been impaired by a physical or mental disability or by the ingestion of alcohol, controlled substance(s), and/or any other mood or mind altering substance(s).
- B. If the victim was a minor at the time the alleged offense occurred, there shall be no statute of limitations or time limit for the filing of a criminal complaint charging a violation of this section.
- C. If the victim was over the age of eighteen (18) at the time the alleged offense occurred, the statute of limitations or time limit for the filing of a criminal complaint charging a violation of this section shall be four (4) years from the date of the alleged offense.

## PROSTITUTION AND HUMAN TRAFFICKING

### **3-7-800 Facilitating Prostitution**

A person is guilty of an offense if that person does any of the following:

- A. Knowingly solicits a person to patronize a prostitute.
- B. Knowingly procures a prostitute for a patron.
- C. Knowingly leases or otherwise permits a place controlled by the actor, alone or in association with others, to be regularly used for prostitution, promoting prostitution, or facilitating prostitution, or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or taking other legally available means.
- D. Knowingly induces or otherwise intentionally causes another to remain a prostitute. A person who is supported in whole or substantial part by the proceeds of prostitution, other than the prostitute or the prostitute's minor child or a person whom the prostitute is required by law to support, is presumed to be knowingly inducing or intentionally causing another to remain a prostitute.

### **3-7-805 Hiring an Individual to Engage in Sexual Activity**

Any person who hires or offers or agrees to hire another individual with the intention of engaging in sexual activity is guilty of an offense.

### **3-7-810 Labor Trafficking**

- A. A person is guilty of an offense if the individual commits or benefits from any of the following:
  1. Benefits financially or receives anything of value from knowing participation in the labor trafficking, knowing or having reason to know it is derived from an act of labor trafficking.
  2. Promotes, recruits, entices, harbors, transports, provides or obtains by any means another person knowing that person may be subjected to labor trafficking.
  3. Attempts or conspires or has the intent to promote, recruit, entice, harbor, transport, provide or obtain by any means another person knowing that person may be subjected to labor trafficking.
- B. If the victim was a minor at the time the alleged offense occurred, there shall be no statute of limitations or time

limit for the filing of a criminal complaint charging a violation of this section.

- C. If the victim was over the age of eighteen (18) at the time the alleged offense occurred, the statute of limitations or time limit for the filing of a criminal complaint charging a violation of this section shall be four (4) years from the date of the alleged offense.

### **3-7-815 Promoting Prostitution**

A person is guilty of an offense if the person does any of the following:

- A. Operates a prostitution business or a house of prostitution.
- B. Induces or otherwise intentionally causes another to become engaged in sexual activity as a business.
- C. Knowingly procures a prostitute for a prostitution business or a house of prostitution.

### **3-7-820 Prostitution**

A person is guilty of an offense if that person does any of the following:

- A. Is a resident of a house of prostitution or is otherwise engaged in sexual activity as a business.
- B. Solicits another person with the intention of being hired to engage in sexual activity.
- C. Agrees to engage in sexual activity with another for money or other items of pecuniary value.

### **3-7-825 Sex Trafficking**

A. A person is guilty of an offense if the individual commits or benefits from any one or more of the following:

- 1. Benefits financially or receives anything of value from knowing participation in the sex trafficking of a person, knowing or having reason to know it is derived from an act of sex trafficking.
- 2. Promotes, recruits, entices, harbors, transports, provides or obtains by any means another person, knowing that person may be subjected to sex trafficking.
- 3. Attempts or conspires, or has the intent to promote, recruit, entice, harbor, transport, provide or obtain by any means another person, knowing that person will be subjected to sex trafficking.

B. The Tribe shall file a criminal complaint against a "John/Jane Doe" where there is physical evidence (forensic interview,

examination, DNA, fingerprints, false name given, etc...) that a minor is a victim of a human trafficking crime but where the perpetrator is unknown.

- C. If the victim was a minor at the time the alleged offense occurred, there shall be no statute of limitations or time limit for the filing of a criminal complaint charging a violation of this section.
- D. If the victim was over the age of eighteen (18) at the time the alleged offense occurred, the statute of limitations or time limit for the filing of a criminal complaint charging a violation of this section shall be four (4) years from the date of the alleged offense.

## MISCELLANEOUS AND OTHER PROVISIONS

### **3-7-900 Expungement of Juvenile 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.

## **CHAPTER EIGHT (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:

- A. 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.
- B. 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.

- A. 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.
- B. 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:

- A. Whether the detained person is in his/her custody or under his/her restraint and the authority for holding the person.
- B. 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.
- C. 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 NINE (9): EXTRADITIONS**

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

### **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.*

## CHAPTER TEN (10): DRUG AND ALCOHOL CODE

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

*Subsequently amended September 27, 2022, via A05-22-444.*

### **3-10-100 Definitions**

- A. "Alcohol" - Neutral spirits distilled at or above one hundred ninety degrees proof, whether or not such product is subsequently reduced, for nonindustrial use.
- B. "Alcoholic beverages" - Any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
- C. "Controlled substance" - The following controlled drugs and substances are hereby declared to be controlled:
  - 1. Morphine
  - 2. Heroin
  - 3. Marijuana and marijuana derivatives
  - 4. Hashish and hash oil
  - 5. Lysergic acid diethylamide - commonly known as LSD.
  - 6. Phencyclidine
  - 7. Mescaline
  - 8. Peyote, except when used as a sacramental in services of the Native American Church in a natural state which is unaltered except for drying, curing, cutting and/or slicing.
  - 9. Psilocybin
  - 10. Tetrahydrocannabinol - whether as that which occurs in marijuana in its natural and unaltered state or as a chemical synthetic.
  - 11. Opium, coca leaves, cocaine, and opiates
  - 12. Amphetamine
  - 13. Methamphetamine
  - 14. Methaqualone
  - 15. Phentermine
  - 16. Any substance which contains any quantity of the derivative of barbituric acid.
  - 17. Codeine
  - 18. Chlordiazepoxide (Librium)

19. Diazepam (Valium)
  20. Dextropropoxyphene (Darvon)
  21. Any substance for which a medical prescription is required.
  22. Narcotic Drugs as defined in 3-10-100(J).
  23. 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.
- D. "Deliver" or "delivery" - the actual, constructive, or attempted transfer of a controlled substance whether or not there exists an agency relationship.
  - E. "Dispense" - 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.
  - F. "Distribute" - to deliver a controlled substance. Distribute shall include delivery by gift, barter, or exchange with or without consideration.
  - G. "Distributor" - a person who distributes or delivers a controlled substance.
  - H. "Dispenser" - a person who dispenses.
  - I. "Manufacture" - the production, preparation, propagation, compounding, or processing of a controlled 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.
  - J. "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 user.
  - K. "Marijuana" means all parts of the plant cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the mature stalks

of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

- L. "Narcotic drugs" - 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.
- M. "Opiate" - 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.
- N. "Opium poppy" - the plant of the species *Papaver somniferum* L., except its seeds.
- O. "Paraphernalia" - any equipment, product or material that is used or modified for making, using, or concealing any controlled substance.
- P. "Person" - any individual, corporation, government, or government subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
- Q. "Poppy straw" - all parts, except the seeds, of the opium poppy after mowing.
- R. (19) "Possession" - actual care, custody, control or management.
- S. "Practitioner" means:
  - 1. 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
  - 2. 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.
- T. "Tribe" - The Spirit Lake Tribe.

U. "Ultimate user" - 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.

**3-10-105 Other Definitions, Sentencing, Culpability, Inchoate and Accomplice Provisions**

All definitions and other provisions of Title Three (3), Chapter Seven (7) shall also apply to all offenses committed under this Chapter.

**3-10-110 Unlawful Intoxication**

A person commits the crime of unlawful intoxication if they appear in a public or private place while under the influence of alcohol and/or other controlled substance(s) and any of the following apply:

- A. They are likely to endanger themselves, other(s) or property.
- B. They engage in boisterous, abusive and/or offensive conduct that annoys or is likely to annoy another person or persons.
- C. The maximum sentence for this offense shall be sixty (60) days in jail, a five hundred dollar (\$500.00) fine or both plus restitution and/or court costs.

**3-10-115 Persons Under Twenty-One (21) - Prohibited Acts**

An individual under twenty-one (21) years of age may not manufacture or attempt to manufacture, purchase or attempt to purchase, consume or have recently consumed other than during a religious service, be under the influence of, be in possession of, or furnish money to any individual for the purchase of an alcoholic beverage.

**3-10-120 Delivery of Alcohol to Persons Under Twenty-One (21)**

Any person who knowingly delivers or otherwise provides alcohol to a person under the age of twenty-one (21) shall be guilty of an offense.

**3-10-125 Unlawful Ingestion**

- A. Any person who willfully and knowingly ingests, inhales or otherwise takes into the body any controlled substance shall be guilty of an offense.
- B. The jurisdiction for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, injected, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

### **3-10-130 Possession of Paraphernalia**

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

### **3-10-135 Possession of a Controlled Drug or Substance**

Unless such substance was obtained directly from or pursuant to a valid prescription or order from a medical veterinary practitioner while acting in the course their professional practice, any person who knowingly possesses a controlled substance shall be guilty of an offense.

### **3-10-140 Manufacturing, Producing, Distributing, Dispensing or Possession with Intent**

It shall be unlawful for a person to knowingly or intentionally do any of the following:

- A. Manufacture, produce, distribute, or dispense a controlled substance unless such manufacture, production, distribution or dispensing is done directly under or pursuant to a valid license for manufacturing, producing, distributing or dispensing controlled substances.
- B. Possess a controlled substance with the intent to manufacture, produce, distribute, or dispense said controlled substance.

### **3-10-145 Keeping a Place for Use or Sale**

It is unlawful for any person to knowingly keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place:

- A. Which is resorted to by persons using controlled substances for the purpose of using those substances; and/or
- B. Which is used for keeping or selling controlled substances.

### **3-10-150 Contraband**

- A. All substances, paraphernalia or other items that are seized pursuant to offenses committed in violation of this Chapter shall be deemed contraband and forfeited to the Tribe.
- B. If the owners are unknown, all substances, paraphernalia or other items in violation of this Chapter shall be seized, deemed contraband and forfeited to the Tribe.
- C. If the owners are unknown, all species of plants from which controlled substances may be derived shall be seized or destroyed, deemed contraband and forfeited to the Tribe.
- D. Any funds or other things of value used for any of the following shall be seized, deemed contraband and forfeited to the Tribe:

1. The purpose of purchasing, possessing or distributing of substances, paraphernalia or other items in violation of this Chapter.
2. Attempting to purchase, possess or distribute substances, paraphernalia or other items in violation of this Chapter.

### **3-10-155 Peyote Exemption**

The provisions of this Chapter relating to the possession and/or 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.

**CHAPTER ELEVEN (11): GANG AND VIOLENCE PREVENTION CODE**

*As enacted May 16, 2017, via A05-17-229.*

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## GENERAL PROVISIONS

### **3-11-110 Purpose**

The purpose of this ordinance is to provide for the health, safety, morals and welfare of Spirit Lake Tribe, residents and visitors of the territory.

### **3-11-120 Authority**

This ordinance is adopted pursuant to Article VI, Section 4 of the Spirit Lake Tribal Constitution.

### **3-11-130 Effective Date**

This ordinance shall take effect upon approval by the Secretary of the Interior as provided in Article VI, Section 4 of the Spirit Lake Tribal Constitution.

## **ABROGATION AND GREATER RESTRICTIONS**

When this ordinance imposes greater restrictions than those contained in other tribal ordinances, codes, or resolutions, the provisions of this ordinance shall govern.

### **3-11-210 Interpretation**

In its interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Spirit Lake Tribe and shall not be deemed as a limitation upon or repeal of any other tribal power or authority.

### **3-11-220 Severability and Nonliability**

- A. If any section, provision or portion of this ordinance is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.
- B. The Tribe declares that there is no liability on the part of the Tribe, its agencies, agents or employees for any damages which may occur as a result of reliance upon or conformance with this ordinance. The Tribe by the adoption of this ordinance does not waive its sovereign immunity in any respect.

### **3-11-230 Applicability**

This ordinance shall apply to the activities of Tribal members, Tribal children and non-member Indians on the reservation.

## IMPLIED CONSENT

### **3-11-310 Implied Consent**

Entry within Tribal territory without the permission of the Tribe is prohibited. Such permission, when given, is expressly conditioned upon the consent of the person entering the jurisdiction of the Tribe for purposes of enforcing this ordinance. Entry made not in conformity with the provisions of this ordinance is made without consent. Any person who enters upon Tribal land shall be deemed to have given consent to the jurisdiction of the Tribe for purpose of enforcing this ordinance.

## DEFINITIONS

### **3-11-410 Definitions**

The following definitions shall be applicable in this Title and Chapter:

- A. "Street Gang" - means any ongoing formal or informal association of three or more persons whose members or associates, individually or collectively, engage in the commission, attempted commission, facilitation or solicitation of a criminal act, or any act that would be a criminal act if the youth were an adult, and who has at least one individual who is an identified gang member.
- B. "Gang loitering" - means one or more persons loitering in all areas within the territory of the Spirit Lake Tribe that would warrant a reasonable person to believe the purpose or effect of that behavior is to enable a criminal street gang to establish control over identifiable areas, to intimidate others from entering those areas, including use of lookalike weapons, or to conceal or facilitate illegal activities.
- C. "Gang member" - shall mean an individual to whom two or more of the following criteria that indicate gang membership apply:
  - 1. Self-proclamation.
  - 2. Witness testimony or official statement.
  - 3. Written or electronic correspondence.
  - 4. Paraphernalia or photographs.
  - 5. Gang related tattoos.
  - 6. Clothing or colors
  - 7. Any other indication of gang membership.
- D. "Gang-Related Offense" - Means any offense identified under Spirit Lake Tribe Law and Order Code Title 3, Chapter 11, committed by a youth or any individual with the intent to promote or further the objectives of a gang.
- E. "Public Place" - Means the public way and any other location open to the public, whether publicly or privately owned.

## OFFENSES

### **3-11-510 Participating in a Criminal Street Gang**

- A. A person violates the crime of participating in a criminal gang by doing any of the following:
1. Intentionally organizing, managing, directing or supervising a criminal street gang with the intent to promote or further the criminal objectives of the criminal gang.
  2. Knowingly enticing or inducing others to engage in violence or intimidation to promote or further the criminal objectives of the criminal street gang.
  3. Furnishing advice or direction in the conduct, financing or management of a criminal street gang's affairs with the intent to promote or further the objectives of a criminal street gang.
  4. Hiring, engaging, employing or exchanging goods for services, or using a minor for any conduct preparatory to or in continuation of any offense in this section.
  5. Committing, attempting to commit, or soliciting one or more criminal offenses proscribed by this Ordinance or the Spirit Lake Tribe Law and Order Code with the intent of promoting or advancing the objectives of a criminal street gang.
- B. Any person guilty of this offense may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed \$5,000, or both.
- C. Evidence of gang membership: evidence concerning indicia of gang membership including, but not limited to, possession of gang-related paraphernalia, gang-related tattoos, or gang-related clothing may be admitted, with proper foundation therefore, for submission into evidence in any case brought under this Section.

### **3-11-520 Gang Loitering and Congregation**

- A. Whenever a community resource officer, security officer or law enforcement officer observes a gang member engaged in gang loitering with one or more other persons in any public place, the community resource officer, security officer or law enforcement officer shall, subject to all applicable procedures promulgated by the chief of police:
1. Inform all such persons that they are engaged in gang loitering in a public place; and

2. Order all such persons to disperse and remove themselves from within sight and hearing of the place at which the order was issued; and
  3. Inform those persons that they will be subject to arrest if they fail to obey the order promptly or engage in further gang loitering within sight or hearing of the place at which the order was issued during the next eight hours.
- B. Any person who fails to obey promptly an order issued under subsection A, or who engages in further gang loitering within sight or hearing of the place at which such an order was issued during the eight-hour period following the time the order was issued, is subject to a fine of not less than \$100 and not more than \$5,000 for each offense, or imprisonment for not more than twelve (12) months for each offense, or both. In addition, any person who violates this subsection may be required to perform community service at the discretion of the Tribal Court. A second subsequent offense shall be punishable by a mandatory minimum sentence of not less than five (5) days imprisonment.

### **3-11-530 Juvenile Gatherings**

- A. Any private place or premises within the territory of the Spirit Lake Tribe which is used as the site of a juvenile gathering is hereby declared to be a public nuisance. No person shall maintain such a nuisance. Whenever such a nuisance is found to exist within the territory of the Spirit Lake Tribe, the community resource officer, security officer or law enforcement officer of the Spirit Lake Tribe shall give the person(s) responsible for the gathering notice to abate the nuisance.
- B. The definitions in this section govern the construction of this section unless the context otherwise requires. In the case of any conflict and any other section of this code, this section's definitions shall control.
1. "Juvenile Gathering" - A juvenile gathering is any assemblage where three or more persons under the age of 21 are present for a social occasion or a social activity and controlled substances or alcoholic beverages or possessed or consumed by any person under the age of 21.
  2. "Person(s) Responsible for a Gathering" - The person(s) responsible for a juvenile gathering is/are the person(s) who own(s), rent(s), leases, or otherwise controls the premises at which the juvenile gathering takes place, the person(s) in charge of the premises, and/or the person(s) who organized the gathering. When the person who organized

the juvenile gathering rents or leases the premises, the person(s) who own(s) the premises shall not be held responsible for the gathering unless the juvenile gathering occurred with the owner's knowledge.