

# FLANDREAU SANTEE SIOUX TRIBE TRIBAL LAW AND ORDER CODE

## TITLE 3. CRIMINAL CODE

### CHAPTER 1. GENERAL PROVISIONS

**Section 3-1-1. Jurisdiction.** The criminal jurisdiction of the Flandreau Santee Sioux Tribal Court shall extend to all criminal offenses committed within the territorial boundaries of the reservation as defined in Title 1, Chapter 4, section 1-4-4, by tribal members, non-member Indians and any other individual or entity provided that individual or entity consents to such jurisdiction. The criminal jurisdiction of the Flandreau Santee Sioux Tribal Court shall be concurrent with any lawful jurisdiction of the federal government.

**Section 3-1-2. Limitations of Actions.** Except as otherwise specifically provided in this code, the commission of a crime under this Title must be prosecuted within the following number of years of the date the criminal act was committed or the last act in a series of acts which amount to a criminal offense under this Code.

- (1) For all felonies, there is a seven (7) year limitation.
- (2) For all misdemeanors, there is a three (3) year limitation.

**Section 3-1-3. Tolling of Statute of Limitations.** If a defendant in a criminal action leaves the jurisdiction of the reservation the limitation set out in 3-1-2 shall be tolled until such time as the defendant returns to the reservation.

**Section 3-1-4. Persons Capable of Committing Crimes-Exceptions.** Any person is capable of committing a crime, except those belonging to the following classes:

- (1) children under the age of ten years;
- (2) children of the age of ten years but under the age of fourteen years, in absence of proof that at the time of the committing the act charged against them they knew of its wrongfulness;
- (3) people who committed the act or made the omission charged under an ignorance or mistake of fact which disproves any criminal intent, but ignorance of the law does not excuse a person from punishment for its violation;
- (4) persons who committed the act charged without being conscious thereof; or
- (5) persons who committed the act charged while under involuntary subjection to the power of superiors.

**Section 3-1-5. Aiding, Abetting or Advising-Accountability as a Principal.** Any person who, with the intent to promote or facilitate the commission of a crime, aids, abets or advises another

person in planning or committing the crime, is legally accountable, as a principal to a crime.

**Section 3-1-6. Accessories to Crime.** A person is an accessory to a crime, if, with intent to hinder, delay or prevent the discovery, detection, apprehension, prosecution, conviction or punishment of another for the commission of a felony, he or she renders assistance to the other person. There are no accessories to misdemeanors. Render assistance means to:

- (1) Harbor or conceal the other person;
- (2) Warn the other person of impending discovery or apprehension, except that this does not apply to a warning given in an effort to bring the other person into compliance with the law;
- (3) Provide the other person with money, transportation, a weapon, a disguise or any other thing to be used in avoiding discovery or apprehension;
- (4) Obstruct anyone by force, intimidation or deception in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of the other person; or
- (5) Conceal, destroy or alter any physical evidence that might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of the other person.

A violation of this Section is a Class 1 misdemeanor.

**Section 3-1-7. Accessory Punishable Though Principal Not Tried or Acquitted.** An accessory to the commission of a felony may be prosecuted, tried, and punished, even if the principal is not prosecuted or tried, and even if the principal was acquitted.

**Section 3-1-8. Attempts to Commit a Crime.** Any person who attempts to commit a crime and in the attempt does any act toward the commission of the crime, but fails or is prevented or intercepted in the perpetration thereof, is punishable where no provision is made by law for the punishment of such attempt. Every attempted commission of a crime under this code shall be classified and punished in accordance with the offense attempted.

**Section 3-1-9. Conspiracy to Commit a Crime.** If two or more persons conspire, either to commit any offense against the laws of the Flandreau Santee Sioux Tribe, or to defraud the Flandreau Santee Sioux Tribe, or any of its subdivisions, in any manner or for any purpose, and one or more of the parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be guilty of the crime of conspiracy. Conspiracy is a Class 1 misdemeanor.

**Section 3-1-10. Definitions.** Terms used in this Title, and in other statutes which prescribe a penalty for a tribal offense, unless the context otherwise plainly requires, mean:

- (1) When applied to the intent with which an act is done or omitted:

- (a) The words “malice, maliciously” and all derivatives thereof import a wish to intentionally vex, annoy, or injure another person, established either by proof or presumption of law;
  - (b) The words “intent, intentionally” and all derivatives thereof, import a specific design to cause a certain result or, when the material part of a charge is the violation of a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, a specific design to engage in conduct of that nature;
  - (c) The words “knowledge, knowingly” and all derivatives thereof, import only a knowledge that the facts exist which bring the act or omission within the provisions of any statute. A person has knowledge when he is aware that the facts exist which brings the act or omission within the provisions of any statute. It does not require knowledge of the unlawfulness of such act or omission;
  - (d) The words “reckless, recklessly” and all derivatives thereof, import a conscious and unjustifiable disregard of a substantial risk that the offender’s conduct may cause a certain result or may be of a certain nature. A person is reckless with respect to circumstances when he consciously and unjustifiably disregards a substantial risk that such circumstances may exist;
  - (e) The words “neglect, negligently” and all words derived thereof, import a want of attention to the nature or probable consequences of an act or omission which a prudent man ordinarily bestows in acting in his own concerns;
  - (f) When the section defining an offense provides that negligence suffices to establish an element thereof, then recklessness, knowledge, intent or malice also constitutes sufficient culpability for such element. When recklessness suffices to establish an element of the offense, then knowledge, intent or malice also constitutes sufficient culpability for such element. When knowledge suffices to establish an element of an offense, then intent or malice also constitutes sufficient culpability for such element. When intent suffices to establish an element of an offense, then malice also constitutes sufficient culpability for such element;
- (2) “Abuse” is an act or series of acts, or omission thereof, intended to or resulting in physical, mental, or emotional harm. Such acts may involve manipulation, intimidation, or coercion; but this is not required. When acts of abuse involve victims that are unaware an act (or omission) is occurring, harm may be implied. Examples of abusive conduct includes, but is not limited to, isolation or unreasonable confinement, financial exploitation, sexual acts, sexual contact, or sexual exposure, or the willful deprivation by a caretaker of the basic necessities of life;

- (3) “Actor,” the person who takes the active part in a transaction;
- (4) “Affirmative defense,” an issue involving an alleged defense to which, unless the tribe’s evidence raises the issue, the defendant, to raise the issue, must present some credible evidence. If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense;
- (5) “Check,” a check, draft, order or other commercial device which orders a financial institute to pay a sum certain of money on its presentment;
- (6) “Coercion” means threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of law or the legal process;
- (7) “Commercial Sex Act” means any sex act, on account of which anything of value is given to or received by any person;
- (8) “Concealed,” any firearm that is totally hidden from view. If any part of the firearm is capable of being seen, it is not concealed;
- (9) “Consideration,” any type of property or thing of legal value, whether delivered in the past, present or to be delivered in the future. The term includes an unfulfilled promise to deliver. The term may include an advantage or benefit to the promisor or a loss or detriment to the promisee. Any amount, advantage or inconvenience, no matter how trifling, is sufficient to constitute consideration;
- (10) “Crime of violence,” any of the following crimes or an attempt to commit, or a conspiracy to commit, any of the same: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first or second degree, arson, kidnapping and any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device;
- (11) “Dangerous weapon,” or “deadly weapon,” any firearm, knife or other instrument, material or substance, whether animate or inanimate, which is calculated or designed to inflict death or serious bodily harm, or by the manner in which it is used to likely inflict death or serious bodily harm;
- (12) “Dealer in stolen property,” a person who:
  - (a) Is found in possession or control of property stolen from two or more persons on separate occasions; or
  - (b) Has received stolen property in another transaction within the year preceding the commencement of the prosecution; or

- (c) Trades in property similar to the type of stolen property received and acquires such property for a consideration which he knows is substantially below its reasonable value;
- (13) “Deprive,” to take or to withhold property of another or to dispose of property of another so as to make it unlikely that the owner will receive it;
- (14) “Destructive device,”
  - (a) Any bomb, grenade, explosive missile, or similar device or any launching device therefore; or
  - (b) Any breakable container which contains a flammable liquid with a flashpoint of one hundred and fifty degrees Fahrenheit or less and has a wick or similar device capable of being ignited;

The term does not include “permissible fireworks” defined by Title 14; any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for used as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device; surplus ordnance sold, loaned or given by the Secretary of the Army pursuant to the provisions of the United States Code; or any other device which is an antique or is a rifle which the owner intends to use solely for sporting purposes;

- (15) “Explosive,” any substance, or combination of substances, that is used for the purpose of detonation and which, upon exposure to any external or internal force or condition, is capable of a relatively instantaneous release of gas or heat. The term does not include “permissible fireworks”;
- (16) “Firearm,” any weapon from which a projectile or projectiles may be discharged by gunpowder. As used in this subdivision, the word “gunpowder” includes any propellant that upon oxidization emits heat and light and is commonly used in firearms cartridges;
- (17) “Identity” means any name, number, or data transmission that may be used, alone or in conjunction with any other information, to identify a specific individual or entity, including any of the following:
  - (a) a name, Social Security number, date of birth, official government-issued driver’s license or identification number, government passport number, or employer or taxpayer identification number;
  - (b) unique electronic identification number, address, account number, or routing code; or
  - (c) telecommunication identification information or access device;
- (18) “Immediate family,” spouse, children, parents or guardian of the victim;

- (19) “Insanity,” the condition of a person temporarily or partially deprived of reason, upon proof that at the time of committing the act charged against him, he was incapable of knowing its wrongfulness, but not including an abnormality manifested only by repeated lawful or antisocial behavior;
- (20) “Intoxication,” a disturbance of mental or physical capacities resulting from the introduction of substances into the body. Intoxication is not, in itself, a mental disease or defect;
- (21) “Law enforcement officer,” any individual authorized by the Tribe to provide law enforcement services on the reservation;
- (22) “Minor” means an individual under the age of 18 years;
- (23) “Moral turpitude,” an act done contrary to justice, honesty, principle or good morals, as well as an act of baseness, vileness or depravity in the private and social duties which a person owes to his fellow man or to society in general;
- (24) “Motor vehicle,” an automobile, motor truck, motorcycle, house trailer, trailer coach, cabin trailer, or any vehicle propelled by power other than muscular power;
- (25) “Obtain,”
  - (a) In relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the actor or another; or
  - (b) In relation to labor or service, to secure performance thereof;
- (26) “Occupied structure,” any structure:
  - (a) Which is the permanent or temporary habitation of any person, whether or not any person is actually present;
  - (b) Which at the time is specially adapted for the overnight accommodation of any person, whether or not any person is actually present; or
  - (c) In which at the time any person is present;
- (27) “Offense” or “public offense,” a crime, petty offense, violation of an ordinance, or act prohibited by tribal, state or federal law;
- (28) “Pass,” to utter, publish or sell or to put or send forth into circulation. The term includes any delivery of a check to another for value with intent that it shall be put into circulation as money;
- (29) “Person,” a natural person, association, corporation, firm, organization, partnership or society;

- (30) “Private place,” a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access;
- (31) “Process,” a writ, warrant, summons or order issued in the course of judicial proceedings;
- (32) “Property,” anything of value, including but not limited to, motor vehicles, real estate, tangible and intangible personal property, contract rights, choses-in-action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power, services, and signatures which purport to create, maintain or extinguish any legal obligations;
- (33) “Property of another,” property in which any person other than the actor has an interest upon which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of an actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement;
- (34) “Prostitution,” means engaging in a commercial sex without being trafficked to do so.
- (35) “Public officer,” an individual who holds a position in the tribal government or in any of its political subdivisions, by election or appointment, for a definite period, whose duties are fixed by law, and who is invested with some portion of the sovereign functions of government;
- (36) “Public record,” any official book, paper, or record created, received, or used by or in any office or agency of the tribe or of any of its political subdivisions;
- (37) “Publish,” to disseminate, circulate or place before the public in any way, other than by speech which is not mechanically or electronically amplified;
- (38) “Receive,” to acquire possession, control or title, or to lend or borrow on the security of the property;
- (39) “Serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm;
- (40) “Service,” labor that does not include a tangible commodity. The term includes, but is not limited to: labor; professional advice; telephone, cable television and other utility service; accommodations in hotels, restaurants or elsewhere;

admissions to exhibits and entertainments; the use of machines designed to be operated by coin or other thing of value; and the use of rental property;

- (41) “Sexual penetration” means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or force any object into the genital and anal openings of another person’s body;
- (42) “Sexual contact” means any touching, not amounting to rape, of the breasts of a female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of any party;
- (43) “Signature,” any name, mark or sign written with intent to authenticate any instrument or writing;
- (44) “Special victim” means any minor as defined in section 3-1-10(22), elder as defined in Title 8, section 21.0202, developmentally delayed, mentally disabled or otherwise incapacitated person, or person who because of his or her current situation is especially vulnerable to being the subject of harm as compared to other tribal community members;
- (45) “Steal,” to commit any act of theft;
- (46) “Structure,” any house, building, outbuilding, motor vehicle, watercraft, truck, trailer, tent, or other edifice, vehicle or shelter, or any portion thereof;
- (47) “Unoccupied structure,” any structure which is not an occupied structure;
- (48) “Victim,” any natural person against whom the defendant in a criminal prosecution has committed or attempted to commit a crime;
- (49) “Voluntary intoxication,” intoxication caused by substances that an actor knowingly introduces into his body, the tendency of which is to cause intoxication;
- (50) “Written instrument,” any paper, document, or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying, or recording information, and any money, credit card, token, stamp, seal, badge, trade mark, service mark or any evidence or symbol or value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

## **CHAPTER 2. CLASSIFICATION OF OFFENSES AND AUTHORIZED SENTENCES**

**Section 3-2-1. Misdemeanor Classes.** Misdemeanor offenses shall be divided into two classes which are distinguished from each other by the maximum penalties authorized upon conviction.



The classes are as follows:

- (1) Class 1 misdemeanor: maximum one (1) year in jail or one thousand dollar fine, or both;
- (2) Class 2 misdemeanor: maximum thirty days in jail or two hundred dollar fine, or both.

**Section 3-2-2. Felony Classes.** There shall be two classes of felonies.

- (1) Class 1 felonies shall be punishable by a term of imprisonment greater than one (1) year but not to exceed three (3) years for any one (1) offense, or a fine greater than \$5,000 but not to exceed fifteen thousand dollars (\$15,000), or both.
- (2) Class 2 felonies shall be punishable by a maximum of one (1) year in jail or a five thousand dollar fine (\$5,000), or both.

**Section 3-2-3. Other Authorized Penalties and Restorative Sentences.** The court may issue to the defendant any other sentence listed in Title 2, Chapter 19 of the Flandreau Santee Sioux Tribe Tribal Law and Order Code; or as set forth in any relevant title.

### **CHAPTER 3. HOMICIDE**

**Section 3-3-1. Homicide Defined.** Homicide is the killing of one human being by the act, procurement, or omission of another.

**Section 3-3-2. Homicide.** A person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently causes the death of another human being. Criminal homicide for purposes of this Code includes murder, manslaughter or negligent homicide. Homicide is a Class 1 felony. There is no limitation on the number of years barring the prosecution of homicide, or any offenses related to the commission of such homicide.

**Section 3-3-3.** Upon probable cause that a homicide has occurred, the suspect is subject to a mandatory arrest and 24-hour hold. A cash bond amount of \$1000 or more must be posted before the defendant can be released from jail.

### **CHAPTER 4. ASSAULTS AND ABUSE**

**Section 3-4-1. Verbal Assault.** Any person who:

- (1) Makes verbal threats or sounds in an attempt to put another in fear of imminent bodily harm, with or without the actual ability to seriously harm the other person;  
or

- (2) Makes a statement with the intent to abuse another person, and such statement is shocking to the conscious of a reasonable person;

shall be guilty of verbal assault. Verbal assault is a Class 2 misdemeanor.

**Section 3-4-2. Simple Assault.** Any person who:

- (1) Attempts to cause bodily injury to another and has the actual ability to cause the injury;
- (2) Recklessly causes bodily injury to another;
- (3) Negligently causes bodily injury to another with a dangerous weapon;
- (4) Attempts by physical menace to put another in fear of imminent serious bodily harm, with or without the actual ability to seriously harm the other person; or
- (5) Intentionally causes bodily injury to another which does not result in serious bodily injury;

shall be guilty of simple assault. Simple assault is a Class 1 misdemeanor.

**Section 3-4-3. Aggravated Assault.** Any person who:

- (1) Attempts to cause serious bodily injury to another, or causes such injury, under circumstances manifesting extreme indifference to the value of human life;
- (2) Attempts to cause, or knowingly causes, bodily injury to another with a dangerous weapon;
- (3) Attempts to cause or knowingly causes any bodily injury to a law enforcement officer or other public officer engaged in the performance of his duties;
- (4) Assaults another with intent to commit bodily injury which results in serious bodily injury; or
- (5) Attempts by physical menace with a deadly weapon to put another in fear of imminent serious bodily harm;

shall be guilty of aggravated assault. Aggravated assault is a Class 1 felony. Upon probable cause that a violation of this Chapter has occurred, the suspect is subject to a mandatory arrest and 24-hour hold. A cash bond amount of \$1000 or more must be posted before the defendant can be released from jail.

**Section 3-4-4. Exposing Others to Communicable Diseases an Assault.** Any person who knows he has an illness or disease, or has reason to believe he may have an illness or disease, that can be transmitted to another person, and intentionally or recklessly transmits such illness or

disease by way of:

- (1) Sharing intravenous needles,
- (2) Sexual act or contact, as defined in sections 3-7-2 or 3-7-3, or
- (3) Any other manner,

shall be guilty of an assault. The assault may be a simple assault or aggravated assault depending on the bodily injury caused.

**Section 3-4-5. Domestic Assault.** Any person who:

- (1) Attempts to cause bodily injury or physical harm to a family or household member, and has the actual ability to cause such injury;
- (2) Recklessly causes bodily injury to a family or household member;
- (3) Attempts by physical menace to put a family or household member in fear of imminent harm, with or without the actual ability to harm the other person;
- (4) Intentionally causes bodily injury to a household or family member which does not result in serious bodily injury; or
- (5) Threatens or harasses a family or household member in a willful or malicious manner, shall be guilty of domestic assault.

Domestic assault is a Class 2 felony. Upon probable cause that a violation of this Chapter has occurred, the suspect is subject to a mandatory arrest and 24-hour hold. A cash bond amount of \$1000 or more must be posted before the defendant can be released from jail.

**Section 3-4-6. Aggravated Domestic Assault.** Any person who:

- (1) Attempts to cause serious bodily injury to a family or household member, or causes such injury, under circumstances manifesting an extreme indifference to the value of human life;
- (2) Attempts to cause, or knowingly causes, bodily injury to a family or household member with a dangerous weapon;
- (3) Assaults a family or household member with intent to commit bodily injury which results in serious bodily injury; or
- (4) Attempts by physical menace with a deadly weapon to put a Household or family member in fear of imminent serious bodily harm,

shall be guilty of aggravated domestic assault. Aggravated domestic assault is a Class 1 felony. Upon probable cause that a violation of this Chapter has occurred, the suspect is subject to a

mandatory arrest and 24-hour hold. A cash bond amount of \$1000 or more must be posted before the defendant can be released from jail.

**Section 3-4-7. Domestic Abuse.** Any person who abuses a family or household member, other than a child, shall be guilty of a Class 1 Misdemeanor. Child abuse is a separate offense in section 3-4-10 of this Title. Upon probable cause that a violation of this Chapter has occurred, the suspect is subject to a mandatory arrest and 24-hour hold. A cash bond amount of \$100 or more must be posted before the defendant can be released from jail.

**Section 3-4-8. “Family or Household Member” Defined.** Means a spouse, former spouse, persons related by consanguinity or adoption of law, persons living in the same household, persons who have lived together, persons who have had a child together, dating, or intimate partners.

**Section 3-4-9.** The provisions of Title 6A, Domestic Violence Protection and Prevention Code shall apply to the domestic offenses listed within this Chapter.

**Section 3-4-10. Child Abuse.** Any person who abuses a child in a manner that does not constitute an assault shall be guilty of child abuse. Child abuse is a Class 1 misdemeanor or Class 2 felony, depending on the severity of the offense. Upon probable cause that a violation of this Chapter has occurred, the suspect is subject to a mandatory arrest and 24-hour hold. A cash bond amount of \$100 or more must be posted before the defendant can be released from jail.

**Section 3-4-11. Elder Abuse.** Any person who abuses an elder in a manner that does not constitute an assault shall be guilty of elder abuse. Elder abuse is a Class 1 misdemeanor or Class 2 felony, depending on the severity of the offense. Upon probable cause that a violation of this Chapter has occurred, the suspect is subject to a mandatory arrest and 24-hour hold. A cash bond amount of \$100 or more must be posted before the defendant can be released from jail.

## CHAPTER 5. FALSE IMPRISONMENT AND KIDNAPPING

**Section 3-5-1. False Imprisonment.** Any person who shall seize, confine, decoy, abduct or carry away any person and hold or detain such person, except in the case of an unmarried minor by a parent thereof, for any of the following reasons.

- (1) To hold for ransom or reward, or as a shield or hostage;
- (2) To facilitate the commission of any felony or flight thereafter;
- (3) To inflict bodily injury on or to terrorize the victim or another;
- (4) To interfere with the performance of any governmental or political function;
- (5) To take or entice away a minor with intent to detain and conceal such minor; or
- (6) To engage in human trafficking.

is guilty of false imprisonment, a Class 1 felony.

**Section 3-5-2. Parental Kidnapping.** Any parent, who takes, entices away or keeps his unmarried minor child from the custody or visitation of the other parent, or any other person having lawful custody or right of visitation, in violation of a custody or visitation determination made by the tribal court or state court, without prior consent is guilty of a Class 1 misdemeanor. A subsequent violation is a Class 2 felony.

## CHAPTER 6. HUMAN TRAFFICKING

**Section 3-6-1. Trafficking In Persons Prohibited.** Whoever knowingly, by any means, uses, kidnaps, recruits, entices, buys, sells, harbors, houses, transports, provides, obtains, advertises, maintains, patronizes, or solicits a person to engage any other person for peonage, slavery, involuntary servitude, forced labor or services, or forced commercial sexual acts, shall be guilty of a Class 1 felony.

**Section 3-6-2.** Upon probable cause that a violation of this Chapter has occurred, the suspect is subject to a mandatory arrest and 24-hour hold. A cash bond amount of \$1000 or more must be posted before the defendant can be released from jail.

**Section 3-6-3. “Forced Labor” Defined.** For purposes of this Chapter, forced labor means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

**Section 3-6-4. “Victim” Defined.** For purposes of this Chapter, the term “victim” means the individual harmed as a result of a crime under this Chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim’s estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named such representative or guardian.

**Section 3-6-5. Supporting Human Trafficking.** No individual acting in his/her own capacity or on behalf of an entity, whether governmental, private, for-profit or not-for-profit may engage in conduct that supports trafficking in persons, procure a commercial sex act, use forced labor, or commit acts that directly support or advance trafficking in persons, including but not limited to acts such as:

- (1) Denying an employee access to the employee’s own identity or immigration documents (including by destroying or confiscating such documents);
- (2) Without legally-sufficient justification, failing to provide (or pay for) return transportation to an employee to the country from which the employee was recruited (if other than the United States), if the employee requests such return transportation upon the end of employment;

- (3) Using materially false or fraudulent pretenses, representations, or promises regarding the employment to solicit a person for employment, or in an offer of employment;
- (4) Charging recruited employees placement or recruitment fees; or
- (5) Providing or arranging housing, whether temporary or permanent, that is conducive to the trafficking of a person.

A violation of this section is a Class 1 felony.

**Section 3-6-6. Benefitting Financially From Trafficking in Persons.** It is a Class 1 felony to knowingly benefit financially or by receiving anything of value from participation in a venture which has engaged in any act in violation of this Chapter, knowing or in reckless disregard of the fact that the venture has engaged in such activity.

**Section 3-6-7. Obstructing Efforts to Combat Trafficking.** Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this Chapter shall be guilty of a Class 2 felony. Obstruction may include, but is not limited to, committing perjury, destroying, concealing, removing or tampering with evidence, and tampering with witnesses.

**Section 3-6-8. Mandatory Restitution.** In addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this Chapter. The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses, as determined by the court. The term "full amount of the victim's losses" shall include the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act.

## **CHAPTER 7. SEX OFFENSES**

**Section 3-7-1. Mandatory Tiering and Registration Required.** Any and all convictions under this Chapter shall include in its sentencing order the tier, if any, the convicted person is assigned. The order will include sufficient instructions for a convicted person to comply with the FSST Sex Offender Registry, found in Title 24. This section applies to adults over the age of 18 for any sex offense; and to juveniles who were at least 14 years old at the time of a rape offense.

**Section 3-7-2. Sexual Acts Defined.** As used in this Chapter, "sexual acts" means making sexual contact, intercourse, anal intercourse, other penetration, masturbation, bestiality, sadism, masochism, fellatio, cunnilingus, nudity, other activity of a sexual nature and for the purpose of sexual stimulation or gratification of any person.

**Section 3-7-3. Sexual Contact Defined.** The term "sexual contact" means any touching, not amounting to rape, of the breasts of a female or the genitalia or anus of any person with the intent

to arouse or gratify the sexual desire of any party.

**Section 3-7-4. No Statute of Limitations for Sex Offenses Committed Against Minors.** There is no limitation on the number of years barring the prosecution of a sex offense against a minor, or any offenses related to the commission of such prohibited sex offense.

**Section 3-7-5. Strict Liability for Sex Offenses Against Minors.** Mistake as to age is not a defense to prosecution under this Chapter.

**Section 3-7-6. Sexual Assault.** Any person who engages in sexual contact or other behavior for the purposes of arousal or enticement for sexual acts with another person:

- (1) Without that persons consent; or
- (2) If the other person did consent, but would not have provided it at the time of the contact or behavior, because the person willfully deceived the other person of a material fact in order to obtain consent;

that person is guilty of sexual assault. Sexual assault is a Class 1 misdemeanor and a Tier I offense.

**Section 3-7-7. Aggravated Sexual Assault.** Any person who engages in sexual contact or other behavior for the purposes of arousal or enticement for sexual acts with another person:

- (1) Without that persons consent; or
- (2) If the other person did consent, but would not have provided it at the time of the contact or behavior, because the person willfully deceived the other person of a material fact in order to obtain consent; and
- (3) Causes the victim serious emotional or physical harm; and/or
- (4) Commits this offense against a special victim;

is guilty of a Class 2 felony and a Tier II offense. Upon probable cause that this offense has occurred, the person is subject to a mandatory arrest and 24-hour hold. A cash bond amount of \$1000 or more must be posted before the defendant can be released from jail.

**Section 3-7-8. Rape.** Any person who commits an act of sexual penetration with any person under any of the following circumstances:

- (1) If the victim is less than fifteen years of age; or
- (2) Through the use of force, coercion or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution;
- (3) If the victim is incapable of giving consent because of any intoxicating, narcotic or anesthetic agent or hypnosis;

- (4) If the victim is incapable, because of mental or physical incapacity, of giving consent to such act;
- (5) If the person knowingly has a sexually-transmitted disease and does not disclose the disease to a sexual partner, any sexual penetration shall be deemed without consent of the victim; or
- (6) Knowing that he or she is without contraception or STD preventative measures, and gives the victim the belief that these protective measures are in place, shall be deemed to have done so without consent of the victim;

shall be guilty of rape. Rape is a Class 1 felony and Tier III offense. Upon probable cause that this offense has occurred, the person is subject to a mandatory arrest and 24-hour hold. A cash bond amount of \$1000 or more must be posted before the defendant can be released from jail.

**Section 3-7-9. Sexual Extortion.** A person who compels another person to submit to a sexual act or contact, directly or indirectly, is guilty of sexual extortion:

- (1) a threat to withhold or harm the victim's trade, business, profession, position, employment, or calling;
- (2) a threat to make or cause to be made a criminal charge against the victim, whether true or false;
- (3) a threat to report the victim's immigration status to immigration or law enforcement authorities;
- (4) a threat to disseminate private sexual images which were taken with or without the knowledge of the victim;
- (5) a threat to expose information that the actor knows the victim wishes to keep confidential; or
- (6) a threat to withhold victim's basic necessities such as food, housing, medicine, or transportation.

Sexual extortion is a Class 1 felony and Tier II offense.

**Section 3-7-10. Non-Forcible Sexual Act with a Minor.** Any person that is less than three years older than the minor, who knowingly engages in a sexual act shall be guilty of a Class 2 misdemeanor if the minor is between the ages of 16 and 18. If the minor is between the ages of 15 and 16, the offense is a Class 1 misdemeanor. These are both Tier I offenses.

There can be no non-forcible sexual act of a minor under the age of 15. In that instance the sexual act is a sexual assault, rape, and/or sexual abuse of a minor.

**Section 3-7-11. Sexual Abuse of a Minor or Ward.** Sexual abuse means the sexual molestation, sexual exploitation, use in a sexual performance, engagement in sexual contact, communication of



sexually explicit materials to a minor, or grooming of a minor or ward for the purpose of committing any offense under this Chapter. Any person who subjects a minor, or a ward to which the person is responsible for, to sexual abuse is guilty of a Class 1 felony and Tier III offense. Upon probable cause that a violation of this Chapter has occurred, the suspect is subject to a mandatory arrest and 24-hour hold. A cash bond amount of \$1000 or more must be posted before the defendant can be released from jail.

**Section 3-7-12. Voyeurism.** No person may observe or watch another without clothing or under or through the clothing, or with another person depicted in a sexual act, for the purpose of viewing the body of, or the undergarments worn by, that other person without the consent or knowledge of that other person for the purpose of sexual stimulation or gratification. Voyeurism is a Class I misdemeanor and Tier I offense.

**Section 3-7-13. Voyeurism of a Minor.** Any violation of section 3-7-12 against a minor is a Class 2 felony and Tier I offense.

**Section 3-7-14. Photographing or Recording a Person in the Nude or During a Sexual Act.** Any person who causes or knowingly permits the photographing, filming, or recording of any other person that depicts the person as totally nude; in a state of undress to expose the genitals, pubic area, buttocks, or female breast; or with another person in a sexual act, without that person's knowledge and for the purpose of sexual stimulation or gratification of any person, shall be guilty of a Class 1 misdemeanor. If the victim is a minor, the offense is a Class 2 felony whether or not the minor knew of the photographing or recording. This is a Tier I offense.

**Section 3-7-15. Distributing Photographs or Recording of a Person in the Nude or During a Sexual Act.**

- (1) No person may disclose, disseminate, sell, or otherwise distribute by any means, any recording or photograph; or
- (2) No person may intentionally manipulate a photograph or recording to create a realistic but false image or recording that would cause a reasonable person to mistakenly believe that the image or recording is authentic.

A violation of this section is a Class 2 felony and Tier I offense.

**Section 3-7-16. Juvenile Sexting Prohibited.** No minor may intentionally create, produce, distribute, present, transmit, post, exchange, disseminate, or possess, through any computer or digital media, any photograph or digitized image or any visual depiction of a minor in any condition of nudity, or involved in any sexual act. A violation of this section is a Class 2 misdemeanor; and it is not tiered for purposes of adding the person to the FSST sex offender registry.

**Section 3-7-17. Defenses to Juvenile Sexting.** It is an affirmative defense to the offense of juvenile sexting that the minor has not solicited the visual depiction, that the minor does not subsequently distribute, present, transmit, post, print, disseminate, or exchange the visual depiction, and that the minor deletes or destroys the visual depiction within a reasonable time after receipt. It is an affirmative defense to the offense of juvenile sexting that the visual depiction is of

a single minor, created by that minor, who does not subsequently distribute, present, transmit, post, print, disseminate, or exchange the visual depiction.

**Section 3-7-18. Depiction of Person Charged not a Defense to Juvenile Sexting.** It is not a defense to the offense of juvenile sexting that the visual depiction is of the person charged.

**Section 3-7-19. Trafficking of Persons for Sex Acts.** Any person who traffics, as defined by section 3-6-1, another person for any sex act is guilty of a Class 2 felony. If the person who is trafficked is a minor, it is Class 1 felony. This offense is a Tier II offense. Upon probable cause that this offense has occurred, the person is subject to a mandatory arrest and 24-hour hold. A cash bond amount of \$1000 or more must be posted before the defendant can be released from jail.

**Section 3-7-20. Patrons Engaged In Trafficking of Persons for Sex or Acts of Prostitution.** Whoever, while acting as a patron of sex trafficking or for prostitution, intentionally purchases a sexual act or hires, offers to hire, or agrees to hire an individual to engage in a sexual act or sexual contact is guilty of a Class 1 misdemeanor. If the patron engages a minor to perform the sexual act, the offense is a Class 2 felony. This is a Tier I offense.

**Section 3-7-21. Acts of Prostitution.** No person may perform sexual acts as services in exchange for money, benefits, or other compensation. A violation of this section is a Class 1 misdemeanor and is not tiered for purposes of adding the person to the FSST sex offender registry.

**Section 3-7-22. Engaging a Minor to Engage in a Sexual Act.** A person who engages a minor with intent to engage in a sexual act or to arouse the sexual desire of any person, is guilty of a Class 2 felony. As used in this section, “engages” means solicits, commanding, coercing, persuading, taking, enticing, falsely imprisoning, entreating, tricking, or attempting to do these acts. Engaging can be facilitated in person, by telephone, by letter, or by computerized or other means. This act is a Class 2 felony and Tier II offense.

Any person who engages a minor between the ages of 16 and 18 to perform non-forcible sexual acts and that is less than three years older than the minor shall be guilty of a Class 2 misdemeanor and a Tier I offense.

**Section 3-7-23. Housing or Transporting of Minors to Facilitate a Prohibited Sex Offense.** When the temporary or permanent housing or transportation of a minor child is conducted for the facilitation of commercial or prohibited sexual offenses in this Chapter:

- (1) Any person who provides or arranges housing or a space for a prohibited sexual offense to occur with a minor, and knows or has reason to know that such provision will result in a commercial or prohibited sexual offense; or
- (2) Any person who provides or arranges transportation for a prohibited sexual offense to occur, and knows or has reason to know that his or her participation will result in a commercial or prohibited sexual offense against a minor;

shall be guilty of a Class 2 felony and a Tier I offense.

**Section 3-7-24. Producing, Distributing, or Selling Child Sexual Abuse Materials “CSAM”.**

Any person who knowingly produces, creates, sells, or distributes any image, whether physical, electronic or other format, depicting a minor engaging in a sexual act or in the simulation of such act or whose knowing possession encourages, aids, abets or entices any person to commit a sexual act against a minor is guilty of a Class 1 felony and Tier II offense.

**Section 3-7-25. Possession or Receipt of Child Sexual Abuse Materials “CSAM”.** Any person who knowingly possesses or receives any image, whether physical, electronic or other format, depicting a minor engaging in a prohibited sexual act or in the simulation of such act or whose knowing possession encourages, aids, abets or entices any person to commit a prohibited sexual act is guilty of a Class 1 felony and Tier I offense.

**Section 3-7-26. Indecent Exposure.** Any person who intentionally and with an immoral purpose exposes his or her genitalia in any place where there are present other persons to be annoyed or offended thereby is guilty of a Class 1 misdemeanor, except for that if such exposure is made to or in the presence of a minor under the age of 16 years it shall be a Class 2 felony. This is a Tier I offense.

**Section 3-7-27. Incest.** No person, age sixteen years or older, shall engage in sexual contact with another person, other than the person’s spouse, if the person is an ancestor or descendant, of the half as well as the whole blood, whether the relationship is legitimate or illegitimate. The relationships provided for in this section include such relationships that arise through foster care and legal adoption.

Any person who commits incest with another person who is a parent/child, sibling, or grandparent/grandchild, shall be guilty of a Class 2 felony. A violation of this section is not tiered for purposes of adding the person to the FSST sex offender registry.

**Section 3-7-28. Aggravated Incest.** Any person who knowingly engages in sexual contact with a minor and is the minor’s parent, adoptive parent, guardian, sibling, aunt or uncle, grandparent; spouse or former spouse of these persons, or at the time of the offense, is providing a foster home to the minor, is guilty of aggravated incest. Aggravated incest is a Class 1 felony and Tier I offense.

**Section 3-7-29. Bestiality.** No person, for the purpose of any person’s sexual gratification, may:

- (1) Engage in a sexual act with an animal; or
- (2) Coerce any other person to engage in a sexual act with an animal; or
- (3) Use any part of the person’s body or an object to sexually stimulate an animal; or
- (4) Videotape a person engaging in a sexual act with an animal; or
- (5) Kill or physically abuse an animal.

Any person who violates any provision of this section is guilty of the crime of bestiality. Bestiality is a Class 2 felony and Tier I offense.

**Section 3-7-30. Criminal Sexual Predatory Conduct.** A person is guilty of criminal sexual

predatory conduct if the person commits an act or series of acts that was motivated by the offender's sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal. This is a Class 1 misdemeanor and Tier I offense.

**Section 3-7-31. Violation of the Sex Offender Registry Ordinance and Mandatory Sentencing Provision.** Each violation of a provision of Title 24, the Sex Offender Registry Ordinance, by a sex offender shall be guilty of a Class 2 felony.

A person previously convicted of a sex offense whose current sex offense conviction is punishable as a Class 1 or Class 2 felony will be moved up a tier in accordance with the Sex Offender Registry Ordinance, codified at Title 24.

**Section 3-7-32. Harboring a Sex Offender.** A person is guilty of harboring a sex offender if he or she:

- (1) Knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of Title 24;
- (2) Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of Title 24; or
- (3) Provides information to law enforcement agencies regarding a sex offender which that person knows to be false.

A violation of this section is a Class 2 felony; and it is not tiered for purposes of adding the person to the FSST sex offender registry.

## **CHAPTER 8. OTHER OFFENSES AGAINST CHILDREN**

**Section 3-8-1. Child Neglect.** Any person who fails or refuses to provide proper or necessary subsistence, supervision, education, medical care or any other care necessary for the health, safety, guidance and wellbeing of a child under that person's custody, guardianship or control shall be guilty of child neglect. Child neglect is a Class 1 misdemeanor.

**Section 3-8-2. Child Abuse.** It shall be either a Class 1 misdemeanor or Class 2 felony offense to abuse a child, depending on the severity and ongoing nature of the abuse.

**Section 3-8-3. Contributing to Dependency or Delinquency of a Child.** Any person who, by an act, causes, encourages or contributes to the abuse, the neglect or the delinquency of a child, or any person, other than a parent who, by any act, causes a child to become a child in need of supervision, as such phrases with reference to children are defined in Title 5 of this code, shall be guilty of a Class 1 misdemeanor.

**Section 3-8-4. Actual Abuse, Neglect, or Delinquency Not Required for Conviction.** In order

to find any person guilty of violating this Chapter, it is not necessary to prove that the child has actually become abused, neglected or delinquent, provided it appears from the evidence that through any act of abuse, neglect or omission of duty or by any improper act or conduct on the part of any such person the abuse, neglect or delinquency of any child may have been caused or merely encouraged.

**Section 3-8-5. Failure to Report Abuse.** Any person who has reasonable cause to suspect or who witnesses abuse or a crime against a child shall report the crime (or suspected crime) to the Tribal Prosecutor, or in his/her stead, a tribal law enforcement officer or social worker immediately. Any person who, without good cause, fails to report shall be guilty of a Class 2 misdemeanor.

**Section 3-8-6. Taking or Enticing Away Child With Intent to Conceal.** Any person who takes or entices away any child under the age of eighteen years with intent to detain and conceal such child from any person having the lawful charge of such child, except in the case of an unmarried minor by a parent thereof, is guilty of a Class 2 felony. It shall be a Class 1 felony to take or entice away a child with intent to conceal if it is done so for the purpose of committing a crime against the child.

**Section 3-8-7. Selling, Buying, or Trading of Children.** It shall be a Class 1 felony offense for a person to sell, buy, or trade a child.

**Section 3-8-8. Criminal Proceedings Under Other Laws Not Prevented.** Nothing in this chapter or Chapter 7 may be construed to be in conflict with or to repeal or prevent proceedings under any other tribal law which may have otherwise defined any specific act of any person as a crime of any character, which act might also constitute contributory abuse, contributory neglect or contributory delinquency, or to prevent or interfere with proceedings under any such law.

## CHAPTER 9. PRIVACY VIOLATIONS

**Section 3-9-1. Window Peeking.** Any person who enters the private property of another and peeks in the door or window of any inhabited building or structure located thereon, without having lawful purpose with the owner or occupant thereof, shall be guilty of a Class 2 misdemeanor.

**Section 3-9-2. Eavesdropping.** Any person who enters the private property of another with the intent to subject anyone to eavesdropping or other surveillance in a private place, shall be guilty of a Class 2 misdemeanor.

**Section 3-9-3. Installation of Recording Device.** Any person who, without the consent of the person or persons entitled to privacy, intends to install any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in such place, or uses any such unauthorized installation to harass, or embarrass and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy, shall be guilty of a Class 1 misdemeanor.

**Section 3-9-4. Stalking.** Any person who willfully, maliciously, and repeatedly follows or

harasses another person or who makes a credible threat to another person with intent to place that person in reasonable fear of death or great bodily injury shall be guilty of the crime of stalking. Stalking is a Class 2 felony.

**Section 3-9-5. Subsequent Conviction as a Felony.** A second or subsequent conviction of section 3-9-4 occurring within seven years of a prior conviction under this Chapter against the same victim shall be a Class 1 felony. Upon probable cause that this offense has occurred, the person is subject to a mandatory arrest and 24-hour hold. A cash bond amount of \$1000 or more must be posted before the defendant can be released from jail.

**Section 3-9-6. “Harasses” Defined.** For the purpose of this Chapter, “harasses” means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose.

**Section 3-9-7. “Course of Conduct” Defined.** For the purpose of this Chapter, “course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct”.

**Section 3-9-8. “Credible Threat” Defined.** For purposes of this Chapter, “a credible threat” means a threat made with the intent and the apparent ability to carry out the threat. A credible threat need not be expressed verbally.

**Section 3-9-9. Violation of Order or Injunction a Felony.** Any person who violates a temporary or permanent restraining order, protection order, or an injunction prohibiting violent, menacing, or other behavior that is harmful to another person, his or her property, family, or pets, shall be guilty of a Class 2 felony. Upon probable cause that this offense has occurred, the person is subject to a mandatory arrest and 24-hour hold. A cash bond amount of \$1000 or more must be posted before the defendant can be released from jail.

## CHAPTER 10. ROBBERY

**Section 3-10-1. Robbery.** Robbery is the intentional taking of personal property, regardless of value, in the possession of another from his person or immediate presence, and against his will, accomplished by means of force or fear, unless the property is taken pursuant to process or otherwise pursuant to law. Robbery is a Class 2 felony offense.

**Section 3-10-2. Armed Robbery.** Committing robbery while in the possession of a dangerous weapon is a Class 1 felony offense. Upon probable cause that this offense has occurred, the person is subject to a mandatory arrest and 24-hour hold. A cash bond amount of \$1000 or more must be posted before the defendant can be released from jail.

**Section 3-10-3. Requisite Force or Fear Required.** To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property or to prevent or overcome

resistance to the taking. If employed merely as a means of escape, it does not constitute robbery.

**Section 3-10-4. Fear Necessary for Robbery.** The fear which constitutes an element of the offense of robbery may be either:

- (1) The fear of an injury, immediate or future, to the person or property of the person robbed, or of any relative of his or member of his family; or
- (2) The fear of an immediate injury to the person or property of anyone in the company of the person robbed at the time of the robbery.

**Section 3-10-5. Taking Without Knowledge of Victim Not Robbery.** The taking of property from the person of another or in his immediate presence is not robbery when it clearly appears that the taking was fully completed without his knowledge.

## **CHAPTER 11. BURGLARY AND UNLAWFUL OCCUPANCY**

**Section 3-11-1. Burglary.** Any person, who enters an occupied structure with intent to commit any crime other than shoplifting or retail theft, or remains in an occupied structure after forming the intent to commit any crime other than shoplifting or retail theft, is guilty of burglary. Burglary is a Class 2 felony.

**Section 3-11-2. Entering or Remaining in Building.** Any person who, knowing that he or she is not privileged to do so, enters or surreptitiously remains in any building or structure, is guilty of a Class 1 misdemeanor.

**Section 3-11-3. Entering or Refusing to Leave Property After Notice.** Any person who, knowing that she or he is not privileged to do so, enters or remains in any place where notice against trespass is given by:

- (1) Actual communication to the actor;
- (2) Posting in a manner reasonably likely to come to the attention of intruders; or
- (3) Fencing or other enclosures which a reasonable person would recognize as being designed to exclude intruders;

shall be guilty of a Class II Misdemeanor, but if the person defies an order to leave personally communicated to him by the owner of the premises or by any other authorized person, he is guilty of a Class I Misdemeanor.

**Section 3-11-4. Affirmative Defenses to Unlawful Occupancy.** It shall be an affirmative defense under sections 3-11-2 and 3-11-3 that:

- (1) The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining on the premises; or

- (2) The actor reasonably believed that the owner of the premises, or other person permitted to license access thereto, would have permitted him to enter or remain.

## **CHAPTER 12. ARSON AND VANDALISM**

**Section 3-12-1. Arson.** Any person who starts a fire or causes an explosion with the intent to:

- (1) destroy or damage a building or occupied structure of another;
- (2) destroy or damage the personal property of another; or
- (3) destroy a building or occupied structure or personal property, whether his own or another's, to collect insurance for such loss;

is guilty of arson. Arson is a Class 2 felony.

**Section 3-12-2. Intentional Damage to Public Property.** Any person who intentionally injures, damages, or destroys public property without lawful consent of the Flandreau Santee Sioux Tribe or the appropriate tribal agency having jurisdiction thereof, shall be guilty of intentional damage to property in accordance with the schedule set out in Section 3-12-4.

**Section 3-12-3. Intentional Damage to Private Property.** Any person who intentionally injures, damages or destroys private property in which other persons have an interest, other than by arson, without consent of the other person, shall be guilty of intentional damage to property in accordance with the schedule set out in Section 3-12-4.

**Section 3-12-4. Degree of Offense According to Value.** The maximum punishment for intentional damage to property under sections 3-12-2 and 3-12-3 shall be determined by the value of the property destroyed, in accordance with the following schedule:

- (1) Intentional damage to property in the first degree: If the damage to property is more than five hundred dollars, the person shall be guilty of a Class 2 felony.
- (2) Intentional damage to property in the second degree: If the damage to property is five hundred dollars or less but more than one hundred dollars, the person shall be guilty of a Class 1 misdemeanor.
- (3) Intentional damage to property in the third degree: If the damage to property is one hundred dollars or less the person shall be guilty of a Class 2 misdemeanor.

**Section 3-12-5. Throwing Substance Upon Public Ways or at Vehicles.** Any person who, with intent to cause damage, deposits, throws or propels any substance upon any highway, roadway, or street, or at any vehicle while such vehicle is in motion or stationary, shall be guilty of a Class 1 misdemeanor.

**Section 3-12-6. Littering.** Any person who throws, drops, casts, or deposits upon any street, alley, sidewalk, yard, or premises, public or private, any kind of filth, cans, paper, trash, containers,



rubbish, bottles, or any other form of litter or waste shall be guilty of a Class 1 misdemeanor.

## CHAPTER 13. THEFT

**Section 3-13-1. Theft Defined.** Any person who takes, or exercises control over the property of another with the intent to permanently deprive that individual of such property shall be guilty of theft.

**Section 3-13-2. Theft by Deception.** Any person who obtains property of another by deception is guilty of theft. A person deceives, if with intent to defraud, the person:

- (1) Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform promise shall not be inferred from the fact alone that the person did not subsequently perform the promise;
- (2) Prevents another from acquiring information which would affect his judgment of a transaction;
- (3) Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or
- (4) Fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration of property he obtains, whether such impediment is or is not valid, or is or is not a matter of official record.

The term "deceive" does not, however, include falsity as to matter having no pecuniary significance, or statements unlikely to deceive reasonable persons.

**Section 3-13-3. Theft by Threat.** A person is guilty of theft if he obtains property of another by threatening to:

- (1) Inflict bodily injury on anyone or commit any criminal offense;
- (2) Accuse anyone of a criminal offense;
- (3) Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair any person's credit or business repute;
- (4) Take or withhold action as an official, or cause an official to take or withhold action;
- (5) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (6) Inflict any other harm which would not benefit the person making the threat.

**Section 3-13-4. Theft of Lost or Mislaid Property.** Any person who comes into control of the property of another that he knows to have been lost, strayed, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, is guilty of theft if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it.

**Section 3-13-5. Receiving Stolen Property.** Any person who receives, retains or disposes of property of another knowing that it has been stolen, or believing that has probably been stolen, unless the property is received, retained or disposed of with the intent to restore it to the owner, is guilty of theft.

**Section 3-13-6. Obtaining Property or Services Without Paying.** Any person who intentionally obtains property or services which he knows is available only for compensation by threat, deception or other means to avoid payment shall be guilty of theft.

**Section 3-13-7. Diverting Services of Another.** Any person who, having control over the disposition of services of others, to which he is not entitled, diverts such services to his own benefit or to the benefit of another not entitled thereto, shall be guilty of theft.

**Section 3-13-8. Embezzlement.** Any person who willfully takes or converts to his or her own use, the money or property of another, of which he or she acquired possession lawfully by reason of some office or employment or position of trust, is guilty of theft by embezzlement. A distinct act of taking is not necessary to constitute theft under this section.

**Section 3-13-9. Unauthorized Possession or Distribution of US Department of Agriculture Commodities.** Any person who receives, retains, disposes, sells, barter or obtains by fraud any USDA commodities or the benefits of any other tribal food assistance programs knowing that he or she is not entitled to do so shall be guilty of theft. Theft under this section is a Class 2 misdemeanor unless the accused shall be accused of a subsequent offense under this section, then it shall be a Class 1 misdemeanor.

**Section 3-13-10. Conversion of Insurance Proceeds.** Any person who, with intent to defraud, converts to personal use the proceeds of an insurance check intended for services provided in the Tribal Health Clinic shall be guilty of theft. For purposes of this section, the term “converts” means endorsing and cashing an insurance check and retaining the proceeds thereof for the personal use of the endorser.

**Section 3-13-11. Notice Required Before Prosecution Under Section 3-13-10.** The insured shall provide notice by certified or registered mail, return receipt requested, to the accused before presenting a violation of section 3-13-10 to the Tribal Prosecutor for prosecution. The notice shall contain the following information:

- (1) That the individual has wrongfully retained insurance proceeds intended for services provided in the tribal clinic;
- (2) That such wrongful retention is a violation of tribal law;

The full amount must be repaid within ten working days or the matter will be reported to the tribal prosecutor for prosecution.

**Section 3-13-12. Classifications of Theft.** Under this Chapter, theft shall be classified and punished as follows:

- (1) Grand Theft: Theft is grand theft if the value of the property stolen exceeds five hundred dollars or if property of any value stolen is taken from the person of another. Grand theft is a Class 2 felony.
- (2) Petty Theft: Any theft that is not grand theft is petty theft. Petty theft of less than one hundred dollars is petty theft in the second degree and is a Class 2 misdemeanor. Petty theft of one hundred dollars or more is petty theft in the first degree and is a Class 1 misdemeanor.

**Section 3-13-13. Poaching.** It shall be a class 1 misdemeanor to hunt, fish, or trap on the Flandreau Santee Sioux Tribe reservation without a license issued pursuant to Title 12, Fish and Game Laws.

**Section 3-13-14. Return of Property Considered in Mitigation of Punishment but Not a Defense.** Return of appropriated property by the alleged wrongdoer before indictment or information is laid before the court may be considered in mitigation of punishment but may not be considered a defense to the charge.

**Section 3-13-15. Disqualification From Tribal Office for Conversion of Public Property.** Any person, otherwise eligible to run for tribal office, who has been convicted for unlawfully obtaining property of the Tribe or any of its subdivisions shall, in addition to the punishment prescribed by this Chapter, be disqualified from holding any tribal office.

## CHAPTER 14. FRAUD AND MISREPRESENTATION

**Section 3-14-1. Passing Checks Against Insufficient Funds - Degrees According to Amount.** Any person who, for himself or as an agent or representative of another, for a present consideration with intent to defraud, passes a check or other instrument drawn on a financial institution knowing at the time of such passing that there are not sufficient funds in the account on which the check was drawn in the financial institution for the payment of such check and all other checks upon such funds then outstanding, in full upon its presentation, although no express representation is made with reference thereto, shall be guilty of passing a check against insufficient funds. Punishment for violation of this section shall be in accordance with the following classifications:

Passing check against insufficient funds in the first degree is a Class 1 misdemeanor when a check or a series of checks is passed within a thirty-day period in the amount of one hundred dollars or more.

Passing check against insufficient funds in the second degree is a Class 2 misdemeanor when a check or a series of checks is less than one hundred dollars.

**Section 3-14-2. Passing Check Against Nonexistent Account.** Any person who, for himself or as an agent or representative of another for present consideration with intent to defraud, passes a check or other instrument drawn on a financial institution knowing at the time of such passing that he or his principal does not have an account with such financial institution, shall be guilty of a Class 1 misdemeanor.

It shall be a defense to this section that the actor's or his principal's account was closed without the actor's knowledge. Evidence that the financial institution mailed a notice by certified or registered mail to the person in whose name the account was listed at the last known address contained in the financial institution's records shall be prima facie proof that the actor had knowledge that the account had been closed.

**Section 3-14-3. Return of Property or Payment of Check Not a Defense.** If a person, who has been accused of a violation of section 3-14-1 or section 3-14-2, restores or returns the property allegedly obtained as consideration or makes payment of the check or other instrument before he is charged with an offense, such fact may be considered in mitigation of punishment but shall not be a defense to a violation of either section.

**Section 3-14-4. Goods, Services, and Other Obligations as Present Consideration.** Present consideration includes goods which are delivered or constructively delivered, and services which are completed. In addition, payment of any obligation due to the Tribe or any of its subdivisions thereof and payment of child support is present consideration for the purposes of this Chapter.

**Section 3-14-5. Notice of Dishonor Required Before Prosecution for Check Against Insufficient Funds.** The holder of an insufficient funds check shall, before presenting it to the tribal prosecutor for prosecution, serve a notice of dishonor upon the writer of the check, by registered or certified mail, return receipt requested. The holder of the dishonored check shall upon return of the receipt hold it for a period of at least five days and upon the expiration of that period shall present the check with the attached bank return, return receipt and copy of the dishonor notice to the tribal prosecutor for prosecution.

**Section 3-14-6. Contents of Notice of Dishonor.** The notice of dishonor required by section 3-14-5 shall be in substantially the following form:

Date: \_\_\_\_\_

Name of issuer: \_\_\_\_\_

Bank on which drawn: \_\_\_\_\_

Date of Check: \_\_\_\_\_

Amount of Check: \_\_\_\_\_

Merchant holding the check: \_\_\_\_\_

You are hereby notified that your check described above has been dishonored and is now being held by the above merchant for a period of five days from the above date.

**Section 3-14-7. Proof of Notice Not Required.** The service of notice of dishonor in accordance with sections 3-14-5 and 3-14-6 is not an element of the crime of passing a check against insufficient funds, nor is it an element of the proof thereof or defense to any prosecution thereof.

If the notice is returned undelivered, or if it appears to the tribal prosecutor that there is reasonable cause to believe that the writer of the check intends to remove himself from the jurisdiction of the court, the tribal prosecutor shall not require such notice.

**Section 3-14-8. Limitation of Bad Checks Prosecution.** A criminal prosecution for violation of Section 3-14-1 or 3-14-2 shall be commenced within six months after the holder of a check receives notice of its dishonor. Failure to prosecute a complaint within six months shall be a bar to any criminal action under those sections. This statute shall be tolled if the accused leaves the jurisdiction of the Tribe, and shall continue to be tolled until such time as the accused returns to the jurisdiction of the Tribe.

**Section 3-14-9. Obtaining Money, Property or Other Assistance From The Tribe By Fraud.** It shall be unlawful for any person to obtain money, property or other assistance from the Tribe or any of its subdivisions, by knowingly making or executing a false statement, instrument, document, or representation. A violation of this section shall be classified and punished in the same manner as the classifications of theft in section 3-13-12.

**Section 3-14-10. Failure to Report Changed Circumstances Affecting Eligibility for Assistance.** It shall be unlawful for any person to knowingly fail to report any change in circumstances which would affect his eligibility for money, property, or other assistance, and thereby obtain money, property, or other assistance to which he or she is not entitled from the Tribe or any of its subdivisions thereof. Violation of this Section is a Class 2 misdemeanor.

**Section 3-14-11. Forgery.** Any person, who, with intent to defraud, falsely makes, completes or alters a written instrument of any kind, or passes such an instrument shall be guilty of forgery. Forgery is a Class 2 felony.

**Section 3-14-12. Possession of Known Forged Instrument With Intent to Defraud.** Any person who possesses a forged instrument with knowledge that it is forged and with intent to defraud shall be guilty of a Class 1 misdemeanor.

**Section 3-14-13. Identity Theft.** A person who transfers, possesses, or uses an identity that is not the person's own, with the intent to commit, aid, or abet any unlawful activity is guilty of identity theft. This includes the use of a scanning device, reencoder, electronic communication, advertisement, or any other means. Identity theft is a Class 2 felony.

**Section 3-14-14. False Impersonation with Intent to Commit Fraud.**

- (1) No person may impersonate any other person, which includes offering a fictitious name or false date of birth, with intent to deceive.
- (2) No person may issue or misuse an identification card by:

- (a) Possessing any cancelled, fictitious, fraudulently altered, or fraudulently obtained tribal identification card;
  - (b) Lending the person's tribal identification card to any other person or knowingly permit its use by another;
  - (c) Displaying or represent an identification card not issued to the person as being the person's card;
  - (d) Photographing, duplicating, or in any way reproducing an identification card or facsimile thereof in such a manner that it could be mistaken for a valid identification card;
  - (e) Using an identification card that was obtained by false swearing, fraud, or false statement of any kind or in any form.
- (3) Engaging in a deceptive activity, commonly known as "catfishing" in which a person creates a fictional persona or fake identity on a digital service which results in the harm or humiliation of another.
  - (4) Use misleading words, digital images, domain names, or other deceptive activity on the internet with the intent to harm or humiliate another.

Any person who violates the provisions of subsections (1) through (2) is guilty of a Class 1 misdemeanor. Any person who violates the provisions of subsections (3) through (4) guilty of a Class 2 misdemeanor.

**Section 3-14-15. Defamation.** It shall be a class 2 felony to communicate to a third party false statements about a person, place or thing that results in damage to its reputation. It can be spoken, slander; or written, libel. Prosecution of defamation under this section does not bar the victim from seeking civil relief.

## **CHAPTER 15. PERJURY**

**Section 3-15-1. Perjury.** Any person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which such an oath may by law be administered, intentionally and contrary to such oath, states any material matter which he knows to be false, shall be guilty of perjury. Perjury is a Class 1 misdemeanor.

**Section 3-15-2. Statement Not Known to be True.** An unqualified statement of that which one does not know or reasonably believe to be true is equivalent to a statement of that which one knows to be false.

**Section 3-15-3. Lack of Knowledge of Materiality of Statement No Defense.** It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement

made by him, or that it did not in fact affect the proceeding in or for which it was made. It is sufficient that it was material and might have been used to affect such proceeding.

**Section 3-15-4. Subornation of Perjury.** Any person who intentionally procures another person to commit any perjury is guilty of subornation of perjury which is a Class 1 misdemeanor.

**Section 3-15-5. "Oath" Defined.** The term "oath" as used in this Chapter includes an affirmation, and every mode of attesting oath was administered or taken in an irregular manner. The term "oath" for purposes of this Chapter does not include an oath of office as relates to future performance of official duty.

## CHAPTER 16. IMPROPRIETIES AND BRIBERY IN PUBLIC OFFICE

**Section 3-16-1. Unlawful Assumption of Public Office.** Any person who gives, or agrees to give, any gratuity or reward in consideration that he or another person be appointed to any tribal office or employment, shall be guilty of a Class 1 misdemeanor.

**Section 3-16-2. Receiving Consideration for Allowing Unlawful Assumption.** Any person who, directly or indirectly, asks or receives any consideration for appointing another person or procuring the employment of another person in any tribal office or employment, or for permitting or agreeing to permit any other person to exercise any of the prerogatives or duties of a public office which the actor holds, shall be guilty of a Class 1 misdemeanor.

**Section 3-16-3. Unlawful Appointments or Employments Void.** Any appointment or employment made in violation of section 3-16-1 or 3-16-2 shall be void, but official acts performed prior to conviction of any offense prohibited by such sections are not invalid.

**Section 3-16-4. Bribery of Tribal Officials and Tribal Employees.** Any person who gives or offers a bribe to a tribal official or a tribal employee with intent to influence the officer or employee in respect to any act, decision, vote, opinion or other proceeding which the officer or employee is responsible shall be guilty of a Class 2 felony.

**Section 3-16-5. Solicitation of Bribes by Tribal Officials and Tribal Employees.** Any tribal official or employee, who asks, receives or agrees to receive a bribe upon agreement or understanding that his vote, opinion, or action upon any matter then pending, or which may by law be brought before him in his official capacity, may be influenced thereby, shall be guilty of a Class 2 felony.

**Section 3-16-6. "Tribal Official" Defined.** For purposes of this Chapter the term "tribal official" includes but is not limited, to any member of the Executive Committee of the Tribe, any member of a tribal board, or any other individual with the power and capacity to hear and determine a controversy on behalf of the Tribe; and any candidate or applicant for these positions.

**Section 3-16-7. Solicitation for Unauthorized Fee for Doing Official Act.** Any tribal official or employee who asks or receives any fee or consideration for any official service which has not been rendered or who asks or receives any emolument, gratuity, reward or other consideration

except as authorized by law, for doing any official act shall be guilty of a Class 1 misdemeanor.

**Section 3-16-8. Solicitation of Compensation for Omission of Official Duty.** Any public officer or employee who asks or receives any emolument, gratuity, reward or other consideration for omitting or deferring the performance of any official duty shall be guilty of a Class 1 misdemeanor.

**Section 3-16-9. Bribery of Judicial Officer or Juror.** Any person who:

- (1) Gives or offers to give a bribe to any judicial officer or juror or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion or decision upon any matter or question which is or may be brought before him for decision; or
- (2) While acting as a judicial officer or juror asks, receives or agrees to receive a bribe upon any agreement or understanding that his vote, opinion or decision upon any matter or question which is or may be brought before him for decision shall be influenced thereby,

shall be guilty of a Class 2 felony.

## **CHAPTER 17. OBSTRUCTION OF ADMINISTRATION OF GOVERNMENT**

**Section 3-17-1. Resisting Execution of Process.** Any person who resists the execution or service of any legal process shall be guilty of a Class 2 misdemeanor.

**Section 3-17-2. Obstructing Tribal Officer.** Any person who intentionally obstructs or attempts to obstruct a public officer or employee, not a law enforcement officer, in the performance of any official duty, or who resists a public officer in performance of his or her duty, is guilty of a Class 2 misdemeanor.

**Section 3-17-3. Obstructing Law Enforcement Officer.** Except as provided in sections 3-17-4 and 3-17-6, any person who, by threatening to use violence, force or physical interference or obstacle, intentionally obstructs, impairs or hinders the enforcement of the criminal laws or the preservation of peace by tribal law enforcement acting under color of official authority, shall be guilty of obstructing a law enforcement officer which is a Class 1 misdemeanor.

**Section 3-17-4. Resisting Arrest.** Any person who intentionally prevents or attempts to prevent a tribal law enforcement officer, acting under color of his authority, from effecting an arrest of the person or another, by:

- (1) Threatening to use physical force or violence against the tribal law enforcement officer or any other person; or
- (2) Using any other means which creates a substantial risk of causing physical injury to the law enforcement officer or any other person;



shall be guilty of resisting arrest. Resisting arrest is a Class 1 misdemeanor.

**Section 3-17-5. Unlawful Arrest No Defense if Officer Acting Under Color of Official Authority.** It is no defense to a prosecution under Section 3-17-3 that the law enforcement officer was attempting to make an arrest which in fact was unlawful, if the officer was acting under color of his official authority and, in attempting to make the arrest he was not resorting to unreasonable or excess force giving rise to the right of self defense. A law enforcement officer acts “under color of his official authority” when, in the regular course of assigned duties, he is called upon to make, and does make, a judgment in good faith based upon surrounding facts and circumstances that an arrest should be made by him.

**Section 3-17-6. False Impersonation of Officer.** Any person who intentionally impersonates any public officer, employee, law enforcement officer, or any person having special authority by law to perform any act affecting the rights or interests of another, and in such assumed character does any act where another person is injured or defrauded, is guilty of a Class 2 misdemeanor.

**Section 3-17-7. Making Intentionally False or Misleading Statements to Tribal Officials Prohibited.** Any person who intentionally makes any false, fraudulent, or misleading statement or entry in any written statement to a tribal official acting within the scope of their authority is guilty of a Class 2 misdemeanor.

**Section 3-17-8. False Reporting to First Responders.** Any person who:

- (1) Knowingly causes a false fire or other emergency alarm to be transmitted to, or within, any fire department, ambulance service or other agency which deals with emergencies on the reservation involving danger to life or property;
- (2) Makes a report or intentionally causes the transmission of a report to law enforcement authorities of a crime or other incident within their official concern, when he knows that it did not occur; or
- (3) Makes a report or intentionally causes the transmission of a report to law enforcement authorities which furnishes information relating to an offense or other incident within their official concern, when he knows that such information is false:

shall be guilty of false reporting to authorities. False reporting to authorities is a Class 1 misdemeanor.

**Section 3-17-9. Misprison of Felony.** Any person who, having knowledge, which is not privileged, of the commission of a felony, conceals the same, or does not immediately disclose such felony, with the name of the perpetrator thereof, and all facts in relation thereto, to the proper authorities, shall be guilty of misprison of a felony. Misprison of a felony is a Class 1 misdemeanor. There is no misprison of misdemeanors.

**Section 3-17-10. Threatening or Intimidating Officers of the Court.** Any person who, directly or indirectly, utters or addresses any threat or intimidation to any judicial officer, juror, referee, arbitrator, umpire, or other person authorized by law to hear and determine a controversy; probation or parole officer, prosecutor, law enforcement officer, or other officer of the court; with

intent to induce him either to do any act not authorized by law, or to omit or delay the performance of any duty imposed upon him by law, or from having performed any duty imposed upon him by law, shall be guilty of a Class 1 misdemeanor.

**Section 3-17-11. Threatening or Intimidating Public Officials.** Any person who, directly, or indirectly, utters or addresses any threat or intimidation to an Executive Committee member, appointed Board or Commission Member, or public officer or employee; or destroys the property of said person or their immediate family, shall be guilty of a Class 1 misdemeanor.

**Section 3-17-12. Aggravated Threats.** Any person who knowingly and intentionally communicates a threat to take the life of or to inflict bodily harm upon an officer of the court as defined in section 3-17-10; or public official as defined in section 3-17-11, or a member of his or her family, is guilty of a Class 2 felony.

**Section 3-17-13. Attempt to Influence a Juror.** Any person who attempts to influence a juror, or any person summoned or drawn as a juror, or chosen an arbitrator or appointed a referee, in respect to his verdict or decision in any cause or matter pending, or about to be brought before him:

- (1) By means of any communication, oral or written, had with him, except in the regular course of proceedings upon trial of the cause;
- (2) By means of any book, paper or instrument exhibited otherwise than in regular course of proceedings upon trial of the cause; or
- (3) By publishing any statement, argument or observation relating to the cause;

shall be guilty of a Class 1 misdemeanor.

**Section 3-17-14. Agreement to Give Particular Verdict.** Any juror, or person drawn or summoned as a juror, or judicial officer, who makes any promise or agreement to give a verdict for or against any party is guilty of a Class 1 misdemeanor.

**Section 3-17-15. Tampering With a Witness.** A person who threatens to injure any person or property, or with intent to influence a witness, offers, confers or agrees to confer any benefit on a witness or prospective witness in an official proceeding to induce the witness to:

- (1) Testify falsely;
- (2) Withhold any testimony, information, document or thing;
- (3) Elude legal process summoning him to testify or supply evidence; or
- (4) Absent himself from an official proceeding to which he has been legally summoned,

shall be guilty of tampering with a witness. Tampering with a witness is a Class 1 misdemeanor.

**Section 3-17-16. Solicitations and Agreements by Witness.** A witness or prospective witness in an official proceeding who knowingly solicits, accepts or agrees to accept any benefit upon the representation or understanding that he will do any thing specified in section 3-17-14, shall be guilty of a Class 1 misdemeanor.

**Section 3-17-17. Falsification of Evidence.** Any person who prepares any false book, paper, record, instrument in writing or other matter or thing with intent to produce it or allow it to be produced as genuine in any trial, proceeding, inquiry or investigation authorized by law, shall be guilty of a Class 1 misdemeanor.

**Section 3-17-18. Falsification of Public Record.** Any person who knowingly makes a false entry in, or falsely alters any public record is guilty of a Class II Misdemeanor, except that when done by a Tribal Officer or employee having custody of the record it shall be a Class 1 misdemeanor.

**Section 3-17-19. Filing False Instrument for Recording.** Any person who knowingly offers a false or forged instrument for filing, registering or recording in a public office, which instrument, if genuine, could be filed, registered or recorded under any tribal law or law of the United States, shall be guilty of a Class 1 misdemeanor.

**Section 3-17-20. Destruction of Tribal Public Records.** Any person who, knowing he or she lacks the authority to do so, intentionally destroys, mutilates, conceals, removes or impairs the availability of any tribal public record shall be guilty of a Class 1 misdemeanor.

**Section 3-17-21. Insurrection.** Whoever incites, assists, or engages in any rebellion or insurrection against the authority of the Flandreau Santee Sioux Tribe, its officials, or the laws thereof, or gives aid or comfort thereto, shall be guilty of a Class 2 felony; and shall be incapable of holding any office under the Flandreau Santee Sioux Tribe. For purposes of this section, insurrection means an organized attempt by a group of people to defeat the government and take control of it, using violence or threats of violence.

## CHAPTER 18. BREACH OF PEACE

**Section 3-18-1. Rioting.** Any use of force or violence or any threat to use force or violence if accompanied by immediate power of execution, by three or more persons acting together and without authority of law is a riot. Rioting is a Class I Misdemeanor, unless the riot results in injury to person or damage to property, then it shall be a Class 2 felony.

**Section 3-18-2. Encouraging or Soliciting Violence in Riot.** Any person who participated in any riot, and who directed, advised, encouraged or solicited other persons who participated in the riots by acts of force or violence shall be guilty of a Class 1 misdemeanor.

**Section 3-18-3. Unlawful Assembly.** Any person who assembles with two or more persons for the purpose of engaging in conduct constituting riot or who, if being present at an assembly that either has or develops such a purpose, remains there with intent to advance that purpose shall be

guilty of unlawful assembly. Unlawful assembly is a Class 1 misdemeanor.

**Section 3-18-4. Disorderly Conduct.** Any person who intentionally causes serious public inconvenience, annoyance, or alarm to any other person, or creates risk thereof by:

- (1) Engaging in fighting or in violent or threatening behavior;
- (2) Making unreasonable noise;
- (3) Disturbing any lawful assembly or meeting of persons without lawful authority;
- (4) Obstructing vehicular or pedestrian traffic;

shall be guilty of disorderly conduct. Disorderly conduct is a Class 2 misdemeanor.

**Section 3-18-5. Disorderly Conduct on Tribal Premises or During Official Tribal Proceedings.** It shall be unlawful for any person to engage in any of the following conduct on tribal premises or at any official tribal meeting or proceeding:

- (1) Threaten or harass tribal employees while on duty;
- (2) Loiter or cause a disturbance at tribal offices or businesses during working hours;
- (3) Disrupt any official proceeding by repeatedly vocalizing opinions or discussing topics that are not at issue;
- (4) To cause disturbance by using threatening or violent behavior during official tribal proceedings.

Violation of this Section is a Class 2 misdemeanor.

**Section 3-18-6. Keeping a Place for Criminal Activity.** Any person who keeps or maintains a place which is resorted to by him or herself or other persons for the purposes of committing repeated or ongoing felonious activity, is a class 1 misdemeanor offense.

## **CHAPTER 19. TRAFFIC OFFENSES**

**Section 3-19-1.** Driving or Control of Vehicle Prohibited With Alcohol in Blood or While Under Influence of Alcohol or Drug. A person may not drive or be in actual physical control of any vehicle while:

- (1) There is 0.08 percent or more by weight of alcohol in his blood as shown by chemical analysis of his breath, blood, or other bodily substance;
- (2) Under the influence of an alcoholic beverage;

- (3) Under the influence of marijuana or any controlled drug or substance to a degree which renders him incapable of safely driving; or
- (4) Under the combined influence of an alcoholic beverage and marijuana or any controlled drug or substance to a degree which renders him incapable of safely driving.

**Section 3-19-2. Punishment for Violation.** If conviction for a violation of 3-19-1 is for a first offense or a second offense on the reservation within a 5-year period the violation is a Class 1 misdemeanor. If conviction for a violation of 3-19-1 is for a number higher than a second offense on the reservation within a 5-year period, the violation is a Class 2 felony.

**Section 3-19-3. Submission to Breath Test Required By Officer - Chemical Test After Positive Breath Test.** Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this Chapter shall, at the request of a law enforcement officer, submit to a breath test to be administered by such officer. If such test indicates that such operator has consumed alcohol, the law enforcement officer may require such operator to submit to a chemical test in the manner set forth in this Chapter.

**Section 3-19-4. Presumptions Arising From Chemical Analysis of Body Fluids.** In any criminal prosecution for a violation of 3-19-1 relating to driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, breath, or other bodily substance shall give rise to the following presumptions:

- (1) If there was at the time five hundredths percent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor;
- (2) If there was at that time in excess of five hundredths percent but less than ten hundredths percent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;
- (3) If there was at that time ten hundredths percent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.
- (4) Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0 cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath.

**Section 3-19-5. Operation of Vehicle as Consent to Withdrawal of Bodily Substances and Chemical Test—Advice as to Right to Refuse Test.** Any person who operates any vehicle on the reservation is considered to have given his consent to the withdrawal of blood or other bodily substance and chemical analysis of his blood, breath or other bodily substance to determine the amount of alcohol in his blood, and to determine the presence of marijuana or any controlled drug

or substance. If any person refuses to submit to withdrawal of blood as required by this Chapter his or her privilege to operate a motor vehicle on the reservation shall be revoked for a period of one year.

The person shall be requested by the officer to submit to the withdrawal of blood or other bodily substance for chemical analysis or chemical analysis of his breath and shall be advised by the officer that:

- (1) If he refuses to submit to the withdrawal or chemical analysis, no withdrawal or chemical analysis may be required, unless he has been arrested for a third violation of 3-18-1, constituting a felony offense;
- (2) He has the right to have a chemical analysis performed by a technician of his own choosing at his own expense, in addition to the test requested by the officer.
- (3) If he refuses to submit to chemical analysis as requested by the arresting officer his privilege to operate a motor vehicle on the reservation shall be revoked for a period of one year.

**Section 3-19-6. Refusal to Submit to Chemical Test or Allow Withdrawal of Bodily Substance Admissible into Evidence.** If a person refuses to submit to chemical analysis of his blood, urine, breath or other bodily substance, or allow the withdrawal of blood or other bodily substance for chemical analysis as provided in 3-19-5, and that person subsequently stands trial for violation of 3-19-1, such refusal may be admissible into evidence at the trial.

**Section 3-19-7. Right to Have Technician of Own Choosing Make Separate Test.** The person tested pursuant to 3-19-5 shall be permitted to have a physician, laboratory technician, registered nurse, physician's assistant or medical technologist of his own choosing administer the chemical analysis in addition to the one administered at the direction of the law enforcement officer.

**Section 3-19-8. Results of Analysis Available to Accused or Attorney.** Upon the request of the person who was tested pursuant to 3-19-5, or upon the request of his attorney, the results of such analysis shall be made available to him or his attorney.

**Section 3-19-9. Withdrawal, Chemical Test and Witness Fees and Expenses.** In the case of a conviction under the Chapter the costs accrued for the withdrawal and chemical analysis of blood or other bodily substance, and witness fees and expenses in connection therewith, shall be taxed by the court as costs in the action.

**Section 3-19-10. Reckless Driving.** Any person who drives any vehicle upon the reservation carelessly and needlessly in disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, is guilty of reckless driving. Reckless driving is a Class 1 misdemeanor.

**Section 3-19-11. Careless Driving.** Any persons who drives any vehicle upon the reservation carelessly and without due caution, at a speed or in a manner so as to endanger any person or property, not amounting to reckless driving as defined in 3-19-10 is guilty of careless driving.

Careless driving is a Class 2 misdemeanor.

**Section 3-19-12. Mandatory Sentencing When Traffic Offenses are Committed While Under the Influence of Alcohol or Controlled Substances.** Any person who has been adjudicated guilty of a traffic offense, and who had alcohol or controlled substances in his or her body at the time the offense was committed, must obtain a treatment needs assessment and follow any recommendations from it.

## **CHAPTER 20. CONTROLLED SUBSTANCES**

**Section 3-20-1. Definitions of Terms.** Terms used in this Chapter, unless the context plainly requires otherwise, mean:

- (1) “Controlled drug or substance” a drug or substance, or an immediate precursor of a drug or substance, except for marijuana, that is defined as a controlled drug or substance by federal or state law;
- (2) “Deliver” or “delivery” the actual or constructive transfer of a controlled drug, substance or marijuana whether or not there exists an agency relationship.
- (3) “Distribute” to deliver a controlled drug, substance or marijuana.
- (4) “Manufacture” the production, preparation, propagation, compounding, or processing of a controlled drug or substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. A manufacturer includes any person who packages, repackages, or labels any container of any controlled drug or substance, except practitioner who dispense or compound prescription orders for delivery to the ultimate user.
- (5) “Marijuana” all parts of any plant of the genus cannabis. “Marijuana” includes a product that contains marijuana or an extract thereof and is intended for use or consumption other than by inhalation, including but not limited to foodstuffs, extracts, oils, tinctures and other similar products.
- (6) “Practitioner” a doctor of medicine, osteopathy, podiatry, dentistry, optometry or veterinary medicine licensed to practice his profession, or pharmacists licensed to practice their profession and physicians certified to practice their profession.

**Section 3-20-2. Manufacturing and Distribution of Controlled Substances Prohibited.** No person may manufacture, distribute, dispense, possess with intent to manufacture, distribute or dispense a controlled substance as defined by section 3-20-1(1). Upon probable cause that this offense has occurred, the person is subject to a mandatory arrest and 24-hour hold. A cash bond amount of \$1000 or more must be posted before the defendant can be released from jail. A violation of this section is a Class 1 felony and is subject to mandatory sentencing. Every sentencing order issued for a violation of this section shall confine the convicted person for at least

180 days. These days must be actually served and cannot be suspended or run concurrently with a treatment program.

A practitioner while acting in the course of his professional practice shall be exempt from this provision. Any distribution of a controlled substance under this section to a minor shall result in a mandatory jail sentence of not less than 90 days.

**Section 3-20-3. Unauthorized Possession of a Controlled Substance.** No person may knowingly possess a controlled drug or substance unless such drug or substance was obtained directly or pursuant to valid prescription or order from a practitioner, while acting in the course of his professional practice. A violation of this section is a Class 2 felony.

**Section 3-20-4. Possession of Marijuana by Persons Aged 21 and Older.** No person may knowingly possess more than one ounce of marijuana unless that person is licensed to do so in accordance with the Marijuana Ordinance, codified in the Flandreau Santee Sioux Tribal Law and Order Code. It is a Class I misdemeanor to possess more than one ounce of marijuana otherwise.

**Section 3-20-5. Possession of Marijuana by Persons Under the Age of 21.** No person under the age of twenty-one years may knowingly purchase, possess, or ingest any amount of marijuana. No person shall sell, give, or otherwise provide marijuana to a person under the age of twenty-one. A violation of this section shall be a Class 1 misdemeanor offense.

**Section 3-20-6.** There shall be a valid affirmative defense to the offenses listed in sections 3-20-4 and 3-20-5, above, if the marijuana was obtained pursuant to a prescription or medical recommendation issued by a licensed medical provider and filled in accordance with the applicable laws, rules, and regulations of the jurisdiction for which it was obtained.

**Section 3-20-7. Distribution of Marijuana.** No person may distribute marijuana without a Marijuana Employee License. Without a license, the distribution of one ounce or less of marijuana is a Class 1 misdemeanor and the distribution of more than one ounce of marijuana is a felony. The distribution of any amount of marijuana to a minor is a Class 2 felony.

**Section 3-20-8.** Any person who knowingly obtains possession of a controlled substance by misrepresentation, forgery, fraud, deception or subterfuge is guilty of a Class 1 misdemeanor.

**Section 3-20-9. Unauthorized Ingestion of Controlled Drug or Substance.** No person may knowingly ingest a controlled drug or substance or have a controlled drug or substance in an altered state in the body unless the substance was obtained directly or pursuant to a valid prescription or order from a practitioner, while acting in the course of the practitioner's professional practice or except as otherwise authorized by law. A violation of this section is a Class 2 felony.

**Section 3-20-10. Ingesting Substance, Except Alcoholic Beverages, for the Purpose of Being Intoxicated.** Any person who intentionally ingests, inhales, or otherwise takes into the body any substance, except alcoholic beverages, for purposes of becoming intoxicated, unless such substance is prescribed by a practitioner of the medical arts lawfully practicing within the scope



of the practitioner's practice, is guilty of a Class 1 misdemeanor.

## CHAPTER 21. DRUG PARAPHERNALIA

**Section 3-21-1. Use or Possession of Drug Paraphernalia as Misdemeanor.** It is unlawful for any person, knowing the drug related nature of the object, to use or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body any controlled substance in violation of this Chapter. Any person who violates any provision of this Section is guilty of a Class 2 misdemeanor.

**Section 3-21-2. "Drug Paraphernalia" Defined.** The term "drug paraphernalia" means any equipment, products and materials of any kind which are primarily used, intended for use or designed for use by the person in possession of them, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body any controlled substance in violation of the provisions of this Chapter. It includes, but is not limited to:

- (1) Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
- (2) Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
- (3) Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance;
- (4) Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances;
- (5) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances;
- (6) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;
- (7) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances;
- (8) Hypodermic syringes, needles and other objects used, or designed for use in injecting controlled substances into the human body; and

- (9) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing cocaine, hashish or hashish oil into the human body, such as:
- (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
  - (b) Water pipes;
  - (c) Carburetion tubes and devices;
  - (d) Smoking and carburetion masks;
  - (e) Roach clips: meaning objects used to hold burning material that has become too small or too short to be held in the hand;
  - (f) Miniature cocaine spoons and cocaine vials;
  - (g) Chamber pipes;
  - (h) Carburetor pipes;
  - (i) Electric pipes;
  - (j) Air-driven pipes;
  - (k) Chillums;
  - (l) Bongs; and
  - (m) Ice pipes and chillers.

**Section 3-21-3. Factors Considered in Determining Whether an Object is Drug Paraphernalia.** In determining whether an object is drug paraphernalia as defined in 3-21-2, the court or other authority shall consider, in addition to all other logically relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) The proximity of the object, in time and space, to a direct violation of this article;
- (3) The proximity of the object to controlled substances;
- (4) The existence of any residue of controlled substances on the object;
- (5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to any person whom he knows, or should reasonably know, intends to use the object to facilitate a violation of this article;

- (6) Instructions, oral or written, provided with the object concerning its use;
- (7) Descriptive materials accompanying the object which explain or depict its use;
- (8) National and local advertising concerning its use;
- (9) The manner in which the object is displayed for sale;
- (10) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community;
- (11) Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
- (12) The existence and scope of legitimate uses for the object in the community; and
- (13) Expert testimony concerning its use.

## **CHAPTER 22. WEAPONS**

**Section 3-22-1. Possession of a Firearm While Court Order in Place.** It shall be unlawful for any person to have a firearm in his possession while there is a court order in place which prohibits the individual from possessing a firearm. Court orders include, but are not limited to, protection orders, restraining orders, and orders related to mental health. Violation of this section is a Class 1 misdemeanor.

**Section 3-22-2. Possession of a Firearm While Domestic Protection Order or Restraining Order in Place.** It shall be unlawful for any person to have a firearm in his possession while there is a protection order or restraining order in place which prohibits the individual from possessing a firearm. Violation of this section is a Class 1 misdemeanor.

**Section 3-22-3. Possession of Firearm While Also in Possession of Controlled Substances.** Any person who has in his or her possession a loaded firearm while in possession of an illicit controlled substance shall be guilty of a Class 1 misdemeanor.

**Section 3-22-4. Possession of Firearm by Convicted Felon.** Any person who has been convicted in a court of competent jurisdiction of a felony crime of violence, who has in his possession or under his control, a firearm, shall be guilty of a Class 1 misdemeanor.

**Section 3-22-5. Possession of Firearm While Under the Influence.** Any person who has in his or her possession a loaded firearm while under the influence of alcohol, drug, or other controlled substance shall be guilty of a Class 1 misdemeanor.

**Section 3-22-6. Reckless Discharge of Firearm or Shooting of Bow and Arrow.** Any person who recklessly discharges a firearm or who recklessly shoots a bow and arrow shall be guilty of a

Class 1 misdemeanor.

**Section 3-22-7. Discharge of a Firearm at an Occupied Structure or Motor Vehicle.** Any person who willfully, knowingly and illegally discharges a firearm at an occupied structure, structure capable of being occupied, or an occupied motor vehicle, or motor vehicle capable of being occupied shall be guilty of a Class 2 felony.

**Section 3-22-8. Discharge of a Firearm From a Moving Vehicle.** Any person who willfully, knowingly and illegally discharges a firearm from a moving motor vehicle shall be guilty of a Class 1 misdemeanor.

**Section 3-22-9. Trip Devices.** Any person who sets a device designed to activate a weapon upon being trapped or approached, and leaves it unmarked or unattended by a competent person shall be guilty of a Class 1 misdemeanor.

## **CHAPTER 23. NICOTINE AND ALCOHOL**

**Section 3-23-1. Furnishing Nicotine to a Person Under the Age of 21 Years.** It shall be a Class 1 misdemeanor for any person to furnish any nicotine products including tobacco, cigarettes, e-cigarettes, or cigars, to a person under the age of twenty-one.

**Section 3-23-2. Furnishing Alcohol to a Person Under the Age of 21 Years.** It shall be a Class 1 misdemeanor to sell or give for use as a beverage any alcohol beverage to any person under the age of twenty-one years unless it is done in the immediate presence of a parent or guardian or spouse over twenty-one years of age.

**Section 3-23-3. Purchase, Possession or Consumption by Persons Under Age Prohibited.** No person under the age of twenty-one years may purchase, possess, ingest or consume alcohol or nicotine except when it is done in the immediate presence of a parent, guardian or spouse over the age of twenty-one years or when consumed in a religious ceremony and given to said person by an authorized person. It shall be a Class 2 misdemeanor for any person between the ages of eighteen and twenty-one years to violate this section. It shall be a Class 1 misdemeanor for any person under the age of eighteen years to violate this section.

## **LEGISLATIVE HISTORY**

Title 3 of the Flandreau Santee Sioux Tribal Law and Order Code was enacted by the Flandreau Santee Sioux Executive Committee by Resolution Number 96-54, on September 3rd 1996; and was approved by the Bureau of Indian Affairs on September 16, 1996. The Executive Committee subsequently amended Title 3 by Resolution numbers 2011-52, passed on July 12, 2011; 2020-46 passed on March 20, 2020; 2020-24, passed on May 12, 2020; and 2022-19 passed on April 19, 2022. Title 3 was amended again by Resolution Number 2023-01 on February 27, 2023.