

Chapter 7. Criminal Offenses
AMENDED

Legislative History

This chapter was originally enacted by the Tribal Council on September 13, 1988 and approved by the Agency Superintendent on September 29, 1988 but rescinded by the Acting Director of the Phoenix Area Office - BIA on December 12, 1988. The Tribal Council amended this chapter in October 1988 and again in February 1989, both rescinded by the Area Director, and another amendment of this chapter on May 13, 1989, approved by the Agency Superintendent on May 26, 1989 and finally concurred by the Area Director on August 11, 1989, however, only approving four sections. As result the tribe continued to apply its 1940 criminal code, which does not properly address the social state nor the changes to meet societal values and expectations. The Major Crimes Act provisions were initially enacted by the Tribal Council in 1988 because of the poor Federal prosecution record for the more serious crimes being committed on the reservation.

Section 1. Title - Effective date - Application - Retroactivity - Contempt power.

(1) This Chapter may be cited as the Fort McDermitt Criminal Code (FMCC).

(2) This code is hereby declared to be an emergency measure and shall take effect and be in force immediately upon its passage by the Tribal Council and with the approval of the Secretary of the Interior or his duly authorized representative(s).

(3) This chapter, except as provided in subsection 4, shall not apply to offenses committed prior to its effective date. Prosecutions for such offenses shall be governed by prior law, which is continued in effect for that purpose. For the purposes of this section, an offense was committed prior to the effective date of this code if any of the elements of the offense occurred prior thereto.

(4) In cases pending on or after the effective date of this code and involving offenses committed prior thereto:

- a. The provisions of this chapter according a defense or mitigation shall apply, with the consent of the defendant.
- b. The court, with the consent of the defendant, may impose sentence under the provisions of this chapter which are applicable to the offense and the offender.

(5) This section does not affect the power of the court or tribal council to punish for contempt, or to employ any enforcement sanction authorized by law.

Section 2. General purposes.

The general purposes of this code are to establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which tribal governmental protection is appropriate. To this end, the provisions of this code are intended, and shall be construed, in accordance with tribal customs as well as to achieve the following objectives:

(1) To ensure the public safety through a vindication of public norms by the imposition of merited punishment; the deterrent influence of the penalties hereinafter provided; the rehabilitation of those convicted of violations of this chapter; and such confinement as may be necessary to prevent likely recurrence of serious criminal behavior.

(2) By definition and grading of offenses, to define the limits and systemize the exercise of discretion in punishment and to give fair warning of what is prohibited and of the consequences of violation.

(3) To prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders.

(4) To safeguard conduct that is not criminal from condemnation as criminal and to condemn conduct that is criminal.

(5) To prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.

(6) To define the scope of tribal interest in law enforcement against specific offenses and to systemize the exercise of the tribe's criminal jurisdiction of its territories in the States of Nevada or Oregon. Such criminal jurisdiction may be exclusive or concurrent as authorized by federal, state or tribal law depending upon the state in which the act was committed or omitted.

Section 3. Proof and presumptions.

No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. An accused is presumed innocent until proven guilty. The fact that the accused has been arrested, confined, or charged with the offense gives rise to no inference of guilt at the accused's trial.

“Element of an offense” means:

- a. The forbidden conduct;
- b. The attendant circumstances specified in the definition and grading of the offense; and
- c. Any required result.

Section 4. Concurrent jurisdiction.

(1) With respect to any of the offenses enumerated in this Code, over which Federal, or the State of Oregon and their respective Courts may have lawful criminal jurisdiction, the jurisdiction of the Fort McDermitt Tribal Court shall be concurrent and not exclusive.

(2) If a person is charged with any offense enumerated in this Code which may be subject to Federal prosecution, he shall not be prosecuted in any Court of the Fort McDermitt Paiute and Shoshone Tribe until after the United States Attorney takes or declines to take action to prosecute said person.

(3) It shall remain in the discretion of the Chief Judge of the Fort McDermitt Tribal Court to order delivery to the proper authorities of the Federal, Tribal, or State Governments for prosecution, of any offender, there to be dealt with according to the law of its respective jurisdiction, where such authorities consent to exercise jurisdiction over a said offender.

Section 5. Exclusiveness of offenses.

No conduct constitutes an offense unless so declared by this code, or by any tribal ordinance. The elements of any offense as contained in this code are the sole elements required for conviction in the Fort McDermitt Tribal Court. Extraneous elements required by other jurisdictions shall not be considered by the judge or jury in reaching a verdict of guilt or innocence. However, this provision does not affect the power of the Tribal Court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment, or decree.

Section 6. Severability.

In the event that any clause, sentence, paragraph, or any part of this code, is adjudged by any court of competent and final jurisdiction to be unconstitutional or invalid, such judgment does not affect, impair, or invalidate any other clause, sentence, paragraph, chapter, section or part of such chapter, but is confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment has been rendered.

Section 7. Repeal.

No statute, law, or rule is continued in force because it is consistent with the provisions of this code on the same subject, but in all cases provided for by this code all statutes, laws and rules heretofore in force by this tribe, whether consistent or not with the provisions of this code, unless expressly continued in force by it, are all repealed and abrogated, such as Chapter 5, “Code of Indian Tribal Offenses” adopted August 15, 1940.

Section 8. Pending actions or proceedings not affected by code.

No action or proceeding commenced before this code takes effect, and no right accrued, is affected by its provisions, but the proceedings therein must conform to the requirements of this code as far as applicable under Section 1(4).

Section 9. Penalties.

Every person convicted of an offense enumerated in this Code may be punished by a fine of not more than \$5,000 or by imprisonment in any BIA or any Tribal Detention facility for not more than one year, or both, for each offense.

CRIMINAL OFFENSES
Offenses Against Persons

Section 10. Aggravated assault.

Any person is guilty of a Class D Offense, except if the victim is under the age of twelve years or the victim suffers permanent loss or impairment of the function of a bodily member or organ in which case he is guilty of a Class E Offense, if that person:

- a. Willfully causes serious bodily injury to another person;
- b. Knowingly causes bodily injury or substantial bodily injury to another person with a dangerous weapon or other weapon, the possession of which under the circumstances indicates an intent or readiness to inflict bodily injury;
- c. Causes bodily injury or substantial bodily injury to another while attempting to inflict serious bodily injury on any person; or
- d. Fires a firearm or hurls a destructive device at another person.

Section 11. Assault.

Any person is guilty of a Class B Offense, except if the victim is under the age of twelve years or the victim suffers permanent loss or impairment of the function of a bodily member or organ, or is a tribal employee or official, in which case he is guilty of a Class C Offense, if that person:

- a. Willfully causes substantial bodily injury to another person; or
- b. Negligently causes substantial bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause serious bodily injury.

Section 12. Battery.

Any person who shall willfully strike or apply the use of force to the person of another, or otherwise inflict bodily injury, or who shall by offering violence cause another person to harm himself, is guilty of a Class C Offense. If the victim of this crime shall be 60 years of age or older, the actor is guilty of a Class D Offense and the Court shall enter an order protecting the elder from any further possibility of disturbance.

Section 13. Domestic Assault.

Any person who knowingly causes bodily injury to a family member or companion, or he negligently causes bodily injury with a weapon to a family member or companion or he knowingly violates a protective order issued by any Court of competent jurisdiction regarding a family member or companion, is guilty of a Class D Offense.

Section 14. Extortion.

Any person who shall knowingly, by making false charges against another person or by any means whatsoever, extort or attempt to extort any money, goods, property, or anything of value, is guilty of a Class C offense.

Section 15. Kidnaping.

Any person who knowingly or purposely, and without lawful authority, restrains another person by hiding or holding the person in a place of isolation; or using or threatening to use physical force against the other person, is guilty of a Class E offense.

Section 16. Murder.

Any person who shall unlawfully or knowingly kill another person, is guilty of a Class E Offense.

Section 17. Manslaughter.

Any person who recklessly causes the death of another person is guilty of a Class D Offense.

Offenses Against the Person – Sex Related

Section 18. General provisions.

In sections 19, 21, and 22 below:

(1) When the criminality of conduct depends on a child's being below the age of fifteen, it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than fourteen.

(2) When criminality depends on the victim being a minor, it is an affirmative defense that the actor reasonably believed the victim to be an adult.

Section 19. Corruption or solicitation of minors.

(1) An adult who engages in, solicits with the intent to engage in, or causes another to engage in a sexual act with a minor, is guilty of a Class B offense if the victim is a minor fifteen years of age or older.

(2) An adult who solicits with the intent to engage in a sexual act with a minor under age fifteen or engages in or causes another to engage in a sexual act when the adult is at least twenty-two years of age and the victim is a minor fifteen years of age or older, is guilty of a Class D offense.

Section 20. Indecent exposure.

Any person who shall arouse, appeal to, or gratify that person's lust, passions, or sexual desires by exposing his penis, vulva, breasts or anus in a public place, or to a minor in a public or private place, is guilty of a Class C offense.

Section 21. Gross sexual imposition.

(1) Any person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of a Class E Offense if:

- a. He compels the victim to submit by force, without consent or by threat of imminent death, or serious bodily injury to be inflicted on any other person;
- b. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in Section 85(2), or other means with intent to prevent resistance;
- c. He knows that the victim is unaware that a sexual act is being committed upon him or her;
- d. The victim is less than fifteen years old; or
- e. He knows or has reasonable cause to believe that the other person suffers from mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.

Section 22. Sexual assault.

(1) Any person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of a Class C offense if:

- a. That person knows or has reasonable cause to believe that the contact is offensive to the other person.

(2) Any person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of a Class D offense if:

- a. The other person is a minor, fifteen years of age or older, and the actor is an adult at least eighteen years of age and not yet twenty-two years of age or older.

(3) Any person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of a Class E offense if:

- a. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other person's conduct;
- b. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the

- victim's knowledge intoxicants, a controlled substance as defined in Section 85, or other means for the purpose of preventing resistance;
- c. The other person is in official custody or detained and the actor has supervisory or disciplinary authority over that other person;
 - d. The other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or
 - e. The other person is a minor, fifteen years of age or older, and the actor is an adult at least twenty two years of age.

Section 23. Giving disease to another.

Any person who shall infect another person with a venereal disease other than AIDS, is guilty of a Class B offense. The Tribal Court shall have authority to order and compel the medical examination and treatment of any person charged with violation of this crime or found to be afflicted with any communicable disease of this nature.

Offenses Against Property – Destruction and Intrusion

Section 24. Arson.

Any person who knowingly and maliciously sets fire to or burns or causes to be burned, or who aids or counsels or procures the burning of any structure, range land or property whether the property of himself or another; is guilty as follows:

- a. Arson that causes serious bodily injury is guilty of a Class E offense.
- b. Arson that causes an inhabited structure or inhabited property to burn is guilty of a Class D offense.
- c. Arson of a structure or range land is guilty of a Class C offense.

Section 25. Breaking and entering.

Any person who shall unlawfully break and enter any dwelling of another, anytime during the night or day, without the consent of the owner or occupant, is guilty of a Class C offense.

Section 26. Burglary.

(1) Any person who unlawfully breaks into and enters a dwelling of another during the nighttime with intent to commit a Class E offense enumerated in this code, therein, is guilty of a Class E offense. It is an affirmative defense to prosecution for burglary that the dwelling was abandoned.

(2) Multiple Convictions. A person may not be convicted both for burglary and for the offense which it was his purpose to commit after the burglarious entry or for an attempt to commit that offense, unless the additional offense constitutes a Class E offense enumerated in this code.

Section 27. Destroying or injuring police vehicle.

Any person who unlawfully attempts to cause or causes to destroy, damage or injure a police vehicle by any means; or, disables any emergency or communications equipment; or, destroys or damages any barrier designed to detain offenders, is guilty of a Class C offense.

Section 28. Destruction or injury of personal property. [Reserved.]

Section 29 Destruction or injury of tribal property.

Any person who shall, willingly and unlawfully, in a maliciously manner injure or destroy any public property of the Tribe shall be guilty of a Class D Offense.

Source: T.C. Resolution FM-89-05-044

Section 30. Illegal branding or altering or obscuring a brand.

Any person who illegally alters or obscures a brand or mark of any commonly domesticated hoofed animal or removes, covers, alters, or defaces any existing mark or brand of such animal with the purpose to obtain or exert unauthorized control over said animal or with the purpose to conceal, misrepresent, transfer, or prevent identification of said animal, is guilty of a Class B offense.

Section 31. Injuring fences.

Any person who shall unlawfully cut, break, stretch, pry open, destroy, padlock or otherwise injure or abuse a temporary or permanent fence of another or the fences of the Fort McDermitt Tribe, is guilty of a Class B offense. Property so injured or abused may be reimbursed after hearing to the injured party at the discretion of the Court.

Section 32. Littering.

Any person who shall place any garbage, refuse, ashes, junk, glass, bottles, tin cans, or any other form of litter or debris on or near any public roads, or upon any other grounds, or in or around any public waters of the Reservation, is guilty of a Class B offense.

Section 33. Malicious mischief.

(1) Any person who willfully tampers with tangible property of another so as to endanger person or property; or willfully damages tangible property of another is guilty of a Class B offense.

(2) It is a Class C offense if the actor recklessly causes pecuniary loss of from one hundred dollars through two thousand dollars.

(3) It is a Class D offense if the actor willfully causes pecuniary loss in excess of two thousand dollars or damages tangible property of another by means of an explosive or a destructive device.

Property is that "of another" if anyone other than the actor has a possessory or proprietary interest therein.

Source: T.C. Resolution FM-89-05-044

Section 34. Trespass.

(1) Trespass. Any person who willfully and knowingly enters and remains on property of another, without permission from the lawful lessee, assignee, or tenant, is guilty of a Class B offense.

(2) Aggravated Trespass. Any person who shall willfully and knowingly enter and remain on property of another, when entry is accomplished by either force or violence, or if he intends to cause or causes annoyance or injury to another person, or commits another offense thereon, is guilty of a Class C offense.

(3) Livestock Trespass. Any owner or possessor of livestock who willfully or knowingly permits such livestock to run at large on the public domain lands of the Fort McDermitt Reservation through failure to maintain such livestock or animal, is guilty of a Class B offense.

a. Liability of owners of livestock injuring persons or property of others. The owner or possessor of any livestock may be held liable for any livestock that inflicts damage or injury to:

1. Motor vehicles or their occupants on any paved roadway within an open range area of the reservation in which proper signs indicating an open range are posted and plainly visible to individuals approaching the entrance of such area; or

2. The crops or other property of another or trespasses upon the lands or premises of another.

b. The owner or possessor of any livestock that inflicts damage to property of another or trespasses upon the fenced lands of another, is liable to the persons sustaining the injuries, for all damages suffered by such owners, together with the costs of the action to recover damages, and reasonable fees allowed by the Tribal Court. Any person owning or having charge of any livestock that goes through, over, or under any lawful fence is liable for all resulting damages. Any livestock that goes through, over, or under a lawful fence is deemed trespassing livestock.

Source: T.C. Resolution FM-89-05-044 Amendment FM00-008-053

Offenses Involving Unlawful Takings

Section 35. Embezzlement.

Any person who shall, having lawful custody of property, including funds, not his own, appropriate the same to his own use with intent to deprive the owner thereof, is guilty of a Class D offense.

Source: T.C. Resolution FM-88-10-067

Section 36. Misuse of government vehicle.

Any person who shall willingly and unlawfully use, injure or misuse any government vehicle of the Tribe, or U.S. Government vehicle in the care and custody of the Tribe, is guilty of a Class B offense.

Section 37. Receiving or concealing stolen property.

Any person who shall receive or conceal any property of another person, knowing the same to have been stolen, or who attempts to conceal any property knowing the same to have been stolen, is guilty of a Class B offense.

Section 38. Robbery.

(1) Any person who if, in the course of committing a theft, inflicts serious bodily injury upon another, or threatens another with or purposely puts him in fear of immediate serious bodily injury, or commits or threatens immediately to commit any Class E offense, is guilty of a Class E offense.

(2) An attempt shall be deemed “in the course of committing a theft” if it occurs in an attempt to commit theft, or in flight, after the attempt or commission.

Section 39. Theft.

(1) Any person who shall take the property of another person without consent of the owner, with intent to steal, or to deprive the owner of his property thereof, is guilty of an offense.

(2) Grading of Theft Offense.

a. Theft constitutes a Class E offense if the amount involved exceeds \$500, or if the property stolen is a firearm, automobile, motorcycle, 4-wheeler, or other motor propelled vehicle, or in the case of theft by receiving stolen property, if the receiver is in the business of buying or selling stolen property.

b. Theft not within subsection 2(a), constitutes a Class C offense, except that if the property was not taken from the person or by threat, or in breach of a fiduciary obligation, and the actor proves by a preponderance of the evidence that the amount involved was less than \$50, the offense is a Class B offense.

Section 40. Unauthorized use of a vehicle.

Any person knowing he does not have the consent of the owner, he takes, operates, exercises control over, rides in or otherwise uses a vehicle, is guilty of a Class B offense. A person who engages in any such conduct without the consent of the owner is presumed to know that he does not have such consent.

Forgery and Other Fraud Offenses

Section 41. Tampering with government records.

(1) Any person who knowingly makes a false entry in or false alteration of a government record, or knowingly, without lawful authority, destroys, conceals, removes, or otherwise impairs the verity or availability of a government record is guilty of a Class B offense.

(2) The offense is a Class C offense if committed by a public servant who has custody of the government record.

Section 42. Bribery.

Any person who gives, offers, or promises to an employee, tribal employee or official or servant of another, any gift, gratuity whatever, without the knowledge or consent of the employer, Tribal Council, master of such servant, or employee, with intent to influence such employee's, official's or servant's action in relation to the employer's or master's business, or the tribal government, is guilty of a Class B offense.

Section 43. Forgery.

Any person, who shall, with intent to defraud, falsely sign, execute, or alter any written statement or instrument, is guilty of a Class B offense.

Section 44. Fraud.

Any person who shall by willful misrepresentation or deceit, or by false interpreting, or by the use of false weights and measures obtain money or other things of value, is guilty of a Class C offense.

Section 45. Issuance of fraudulent checks.

Any person who shall knowingly issue in exchange for anything of value, with intent to defraud, any check, draft, or order for payment of money upon any bank or other depository, knowing at the time of the issuing that the offender has insufficient funds in or credit with the bank of depository for payment of such check, draft, or order in full amount upon its presentation, is guilty of a Class B offense.

Section 46. Unlawful conspiracy.

If two or more persons, shall conspire either to commit an offense against or to defraud the Fort McDermitt Tribe, or any of its subsidiaries or enterprises in any manner or purpose; and one or more of such persons do any act to effect the object of such conspiracy, each such person, is guilty of a Class C offense; and each such non-Indian or non-member Indian involved shall be ordered to vacate under an exclusion statute or resolution promulgated by the Tribal Council.

Offenses Involving Children and Dependant Persons

Section 47. Child abuse.

Any parent, guardian, or person who has been entrusted with, or who has assumed the care of a child under the age of eighteen years, knowingly causes, or to be caused, the infliction of physical or mental injury, the deprivation of food, shelter, clothing or services necessary to maintain the physical or mental health of a child, is guilty of a Class D offense.

Section 48. Contributing to the delinquency of a minor.

Any person who by any act willfully encourages, causes, or contributes to the delinquency or deprivation of any minor is guilty of a Class B offense.

Any person who by any act willfully encourages, causes, or contributes to the deprivation of a child less than sixteen years of age by causing that child to engage in sexual conduct is guilty of a Class D offense.

Section 49. Endangering the welfare of a minor.

Any parent, guardian, or person who has been entrusted with, or who has assumed the care of a child under the age of eighteen years, neglects or knowingly leaves such child without care or abandons him under any circumstances, whether at home or not, whereby the child may suffer from neglect, or who shall neglect the child in any manner or who shall cause such child to be exposed to bodily injuries, is guilty of a Class C offense.

Section 50. Failure to send children to school.

Any person who shall, without good cause, neglect or refuse to send his children or any children under his care to school, is guilty of a Class B offense.

Section 51. Failure to support dependent persons.

Any person who shall, because of habitual intemperance or gambling or for any other reason, refuse or neglect to furnish food, shelter, or care to those dependent upon him, including any dependent children born out of wedlock, is guilty of a Class A offense.

Section 52. Interference with custody.

Any person, knowing he is without privilege to do so or being reckless in that regard, shall entice, take, keep, or harbor a minor under eighteen years of age, or a mentally or physically handicapped person under twenty-one years of age from his parent, guardian, or custodian, is guilty of a Class D offense:

Section 53. Visitation interference.

Any person who has legal custody of a minor child or children, knowingly and willingly frustrates the visitation rights of a person entitled to visitation under an existing court order of the Tribe, is guilty of a Class B offense.

Offenses Against the Public Peace and Order

Section 54. Criminal Defamation.

(1) Any person who willfully publishes defamatory matter or knowingly procures such publication or in any way knowingly aids or assists in the same being done, is guilty of a Class A offense. It is a defense to a prosecution under this section that, the matter alleged to be defamatory is true, or, the matter alleged to be defamatory was contained in a privileged communication.

(2) In this section:

a. "Publication" means a knowing display of defamatory matter, or the parting with its immediate custody under circumstances which exposed the defamatory matter to be read or seen or understood by a person other than the publisher of the defamatory matter, although it is not necessary that the matter complained of should have been seen or read by another.

b. "Defamatory matter" means any written or oral communication concerning a person made public with actual malice or with reckless disregard of the truth by any utterance, printing, writing, sign, picture, representation, or effigy tending to expose such person to public hatred, contempt, or ridicule or to deprive him of the benefits of public confidence and social intercourse or any written or oral communication concerning a person made public as aforesaid designed to blacken and vilify the memory of one who is dead and tending to scandalize or provoke his surviving relatives and friends.

c. "Privileged Communication" means a communication made to a person entitled to or interested in the communication by one who is also entitled to or interested or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent.

Section 55. Cruelty to animals.

Any person who cruelly mistreats or neglects an animal, or any killing or injuring of an animal belonging to himself or of another, is guilty of a Class B offense.

Section 56. Curfew Violations.

(1) Any parent or guardian who knowingly fails to have a child observe and obey the curfew schedule below, is guilty of a Class B offense. Any minor child under the age of eighteen years shall observe the following curfew schedule:

a. During School Terms. All children shall be off the streets and at or in their homes before 10:00 p.m., unless accompanied by their parents or guardian on a legitimate absence from home.

b. During Vacation or Weekend Periods. Children will be allowed to remain out until 11:30 p.m. When a school or community function is held which does not close or end prior to the curfew limits; any child will be allowed to remain out until one-half hour after the close or end of such function, so long as accompanied by a parent or guardian.

Section 57. Discharging firearms or air guns.

Any person who knowingly discharges any type of firearms, air rifle, sling shot, hunting or archery bow or other similar weapons, unless in a designated area such as an archery or rifle range, within the reservation community or within 300 feet of any inhabited building or home, or in any place where there is any person to be in danger thereby, although no injury shall ensue, or upon any public road or highway on the Reservation, is guilty of a Class B offense.

Section 58. Discharging fireworks.

Any person who shall unlawfully discharge any fireworks of an explosive or burning nature in any tribal or private building, stockyard; on any tribal grazing, haylands; or along any public highway; or during designated periods of fire restriction as may be issued by the Tribal Council, is guilty of a Class C offense.

Section 59. Disorderly Conduct.

Any person who knowingly causes public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, is guilty of a Class C offense, if he:

- a. engages in fighting or threatening, or in violent or tumultuous behavior; or
- b. makes unreasonable noise or offensive coarse utterance, gesture or display, or addresses abusive language to any person present; or
- c. creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor; or
- d. disrupts a lawful meeting or a ceremonial procession or a community gathering, he does any act intending to obstruct or interfere with it physically or make any utterance, gesture, or display designed to outrage the sensibilities of the group.

Source: T.C. Resolution FM-89-05-044

Section 60. Harassment.

(1) Any person who knowingly frightens or harasses another, either personally or through an agent, is guilty of a Class B offense if the person:

- a. Communicates in writing or by telephone a threat to inflict injury on any person, to any person's reputation, or to any property;
- b. Makes a telephone call anonymously or in offensively coarse language;
- c. Makes repeated telephone calls, whether or not a conversation ensues, with no purpose of legitimate communication; or
- d. Communicates a falsehood in writing or by telephone and causes mental anguish.

(2) Any person who purposely telephones a 911 emergency line to annoy or harass another person or who makes a false 911 report is, guilty of a Class C offense.

- a. Purpose to annoy or harass is established by proof of one or more calls with no legitimate 911 emergency.
- b. Upon conviction of a violation of this subsection, a person is also liable for all costs incurred by any unnecessary emergency response.

(3) Any offense defined herein and committed by use of a telephone may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received.

(4) Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, or other similar means.

Section 61. Maintaining a public nuisance.

Any person who shall set in such a manner, or permit his property to fall into such condition as to injure, or endanger the safety, health, comfort, or property of his neighbors, is guilty of a Class A offense.

Section 62. Maintaining a vicious dog.

(1) Any person who knowingly maintains a vicious dog, is guilty of a Class A offense.

(2) A law enforcement officer may restrain, or otherwise control such dog upon reasonable suspicion that a violation of this section occurred. During enforcement a police officer shall take any reasonable action necessary to protect and preserve his life and safety and of those persons present. The Court may order a person in violation hereof, to make restitution for any expense incurred for the cost or loss of injury inflicted to a livestock or other animal and may further order the vicious dog destroyed.

Section 63. Menacing.

Any person who knowingly places or attempts to place another in fear by menacing him with imminent bodily injury, is guilty of a Class B offense.

Section 64. Riot or inciting to riot.

Any person whose intention is an unlawful assembly of three or more persons for the purpose of disturbing the public peace by any acts of violence and resist lawful authority to disperse on command to do so by a tribal official or a law enforcement officer exercising authority under this code, is guilty of a Class C offense. Related to "Riot" is "Inciting to Riot," this occurs when one incites or encourages other persons to create or engage in a riot as defined.

Section 65. Tampering with communications.

Any person who shall interfere with communications by displacing, removing, injuring, or destroying any radio station, TV tower, antenna, cable, telephone line, wire, pole, or conduit or shall cut, break, tap, or use any other means in destroying, interfering with, or preventing the operation of communications or assists in any of the foregoing conditions, is guilty of a Class C offense.

Section 66. Terrorizing.

Any person who knowingly places another person in fear for that person's or another's safety or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious disruption or public inconvenience, or in reckless disregard of the risk of causing such terror, disruption, or inconvenience, is guilty of a Class D offense, if the person:

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

Offenses Against Public Justice and Administration

Section 67. Carrying concealed weapon.

It is unlawful for any person to go about in public or private places, tribal buildings, schools, and health or wellness centers armed with a dangerous weapon, concealed upon his person, unless he shall have a permit from the Tribal Council to carry the same in his possession, is guilty of a Class C offense.

Section 68. Criminal contempt.

- (1) Any person who knowingly engages in any of the following conduct, is guilty of a Class B offense:
- a. disorderly, contemptuous, or insolent behavior committed during the sitting of the Tribal Court, in the immediate view and presence of the Court, and directly tending to interrupt its proceedings or to impair the respect due its authority;
 - b. breaching the peace by causing a disturbance directly tending to interrupt the proceedings of the Tribal Court;
 - c. purposely disobeying or refusing any lawful process or other mandate of the Tribal Court;
 - d. unlawfully refusing to be sworn as a witness or juror in any tribal court proceeding or, after being sworn, refusing to answer any legal and proper questions;

- e. purposely publishing a false or grossly inaccurate report of a Tribal Court proceeding; or
- f. purposely failing to obey any mandate, process, or notice relative to serving as a juror.

Section 69. Electioneering.

It is unlawful for any person, including a candidate for office, to solicit for a tribal political candidate within two-hundred feet of any place of active Tribal voting or open polls during tribal council elections, is guilty of a Class B offense.

Section 70. Eluding a police officer.

Any driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or police officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a Class C offense.

Section 71. Escape.

(1) Any person who, without lawful authority, removes himself or attempts to remove himself from official detention, or the person fails to return to official detention following temporary leave granted for a specified purpose or limited period, is guilty of a Class D offense.

(2) In this section “Official Detention” means arrest, custody following surrender in lieu of arrest, detention in a facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent under a law authorizing such detention while criminal proceedings are held in abeyance, detention for extradition, or custody for purposes incident to the foregoing, including transportation, medical diagnosis or treatment, court appearances, work, and recreation, or being absent without permission from any release granted while under custody of a sentence such as work or education release, community confinement, or other temporary leaves from any correctional or placement facility, but “official detention” does not include supervision on probation or constraint incidental to release.

Section 72. Failure to appear.

Any person who fails to appear before any court of the Fort McDermitt Tribe when summoned or ordered to do so, is guilty of a Class B offense. The Court shall issue a warrant for his arrest and bring such person before the Court at the next available court date, except when the person notifies the Clerk of the Court in writing for his excuse five business days prior to his scheduled appearance.

Section 73. Failure to appear after release - Bail jumping.

Any person who after having been released upon condition or undertaking that he will subsequently appear before the tribal court or judge as required, and he willfully fails to appear as required, is guilty of a Class C offense.

Section 74. False reports to law enforcement authorities.

Any person who gives false information to any law enforcement officer concerning the alleged commission of any offense of the Fort McDermitt Law and Order Code, causes a false alarm of fire, or other emergency to be transmitted, is guilty of a Class B offense.

Section 75. Fleeing a police officer.

Any person, other than the driver of a motor vehicle under Section 70, who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing police officer, when given a visual or audible signal to stop, is guilty of a Class B offense for a first or second offense and a Class C offense for a subsequent offense. A signal to stop complies with this section if the signal is perceptible to the person and, if given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the vehicle is appropriately marked showing it to be an official police vehicle; or if not given from a vehicle, the signal is given by hand, or voice, and the officer is in uniform and prominently displays the officer’s badge of office.

Section 76. Harboring a runaway minor - Penalty.

Any person who willfully harbors a runaway minor with knowledge that the child is being sought by a law enforcement authority is guilty of a Class C offense. This section does not apply to a person who provides temporary sanctuary, not exceeding seventy-two hours, to a runaway minor who is seeking refuge from a physically, sexually, or mentally abusive person. For the purposes of this section “runaway minor” is an unemancipated minor under 18 years of age, who is voluntarily absent from his home without the consent of his parent(s) or legal guardian with the intention of evading the direction or control of the parent or guardian. This section also does not apply to persons providing temporary sanctuary to minors accomplished by a parent or legal guardian in a domestic violence dispute.

Section 77. Homicide or assault while fleeing or eluding a police officer.

Any person who negligently causes serious bodily injury of another or if that person negligently causes the death of another while in violation of Section 70 or Section 75, is guilty of a Class E offense.

Section 78. Disposing of personal property of an estate.

Any person who sells, trades, or otherwise disposes of any personal property of the estate of a deceased person before the determination of the heirs without proper authority, is guilty of a Class B offense.

Section 79. Impersonation of an officer.

Any person who shall knowingly impersonate a police officer or any official acting for the Tribal Government, by using badges or any type of credentials, uniforms, decals, or any other means to exercise the function of any tribal official or police officer, is guilty of a Class C offense.

Section 80. Official misconduct.

(1) Any tribal official, employee, or committee member, when in his official capacity he commits any of the following acts, is guilty of a Class D offense:

- a. knowingly or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;
- b. knowingly performs an act in his or her official capacity which he knows is forbidden by law;
- c. with the purpose to obtain advantage for himself or another, performs an act in excess of his lawful authority; or
- d. solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law.

(2) A tribal official or employee who has been charged as provided in this section may be suspended from his office without pay pending final judgment; and such official upon his conviction shall be removed from his office in accordance with constitutional law.

(3) A committee member who has been charged as provided in this section shall be suspended from his office, and upon his conviction, without the ability to hold a position on any committee established by the tribal council for a period of six years beginning on the date of his conviction.

Section 81. Obstructing justice.

Any person when he knowingly obstructs, impairs or perverts the administration of law by force, violence, physical interference or obstacle, or any other unlawful act, is guilty of a Class C offense. Except that this section does not apply to flight by a person charged with an offense, or refusal to submit to arrest.

Section 82. Perjury.

Any person who shall knowingly make in any judicial proceeding of the Court, when a lawful oath is administered, he makes; or during any administrative, executive or legislative proceeding of the Tribal Council he makes, a false statement under oath or equivalent affirmation, or by swearing or affirming the truth of a false statement previously made, when the statement is material to the proceeding and he does not believe it to be true, is guilty of a Class B offense.

Section 83. Refusing to aid an officer.

Any person who negligently fails or refuse to aid a law enforcement officer, when called upon for assistance in preventing or halting the commission of an offense, or in apprehending or detaining an offender, is guilty of a Class A offense.

Section 84. Resisting lawful arrest.

Any person who recklessly or by force shall resist or interfere with a lawful arrest of himself or another, is guilty of a Class C offense. It is no defense to a charge of resisting that the arrest was unlawful, provided the law enforcement officer was acting under the color of his official authority.

Drug and Alcohol – Related Offenses

Section 85. Construction.

(1) The individual and collective subsections within this section shall be construed liberally in accordance with the legislative objectives of addressing and deterring the illegal distribution and/or use of controlled substances, alcohol, and drug transactions. Except that nothing in this part shall be construed to make illegal an act that is otherwise already legal, the term “except that” in this section means that the liberal construction shall be limited only to the extent that it is necessary to prevent overreaching by making an act illegal, when that act is commonly recognized to be legal. For example, the distribution, dispensing or sale of Peyote transacted by such person(s) who performs any act proper and respective with the Native American Church.

(2) For the purpose of this section, “Controlled Substance” shall have the following meaning: Any quantity of a substance that is named below, and drugs whose general availability is restricted or any one of a number of drugs or other substances which are strictly regulated or outlawed because of their potential for abuse or addiction. Such illegal drugs include those classified as narcotics, stimulants, depressants, hallucinogens, and cannabis and in illegal trade, controlled substances are known as “drugs” or “dope”, and the commonly known controlled or other substances can be classified as follows:

CANNABIS this class includes marijuana, hashish, and hashish oil.

DEPRESSANTS this class includes barbiturates and tranquilizers such as librium and valium.

HALLUCINOGENS this class includes LSD (lysergic acid diethylamide), peyote, and mescaline.

NARCOTICS this class includes opiates, including opium, heroin, morphine and codeine; and nonopiate synthetic narcotics such as Demerol and methadone.

STIMULANTS this class includes cocaine, a drug extracted from the leaves of the South American coca plant, amphetamines, and other amphetamine-like synthetic drugs referred to or known as, “crack”, “crystal meth”, “meth”, or “methamphetamine”.

Section 86. Sacramental use of peyote permitted.

(1) The criminal sanctions provided in FMCC 87, 88, 91 to 93, inclusive, does not apply to that plant of the *genus Lophophora* commonly known as peyote when such peyote is used as the sacrament in religious rites of bona fide Native American Church ceremonies or activities.

(2) The Fort McDermitt Tribal Council recognizes that its members and non-member visitors practice their religious beliefs in accordance with the teachings provided by and through the Native American Church, and the use of Peyote is wide-spread throughout the Fort McDermitt Reservation and therefore legal within its territory for that purpose and is protected under the Native American Religious Freedom Act.

Section 87. Prohibited acts – Penalties.

(1) It is unlawful for any person to willfully manufacture, deliver, or possess with intent to manufacture, or deliver, a controlled substance. Any person who violates this subsection with respect to:

- a. A controlled substance classified as a narcotic drug, or any amphetamine-like drugs referred to or known as, crack, crystal meth, meth or a methamphetamine is guilty of a Class E offense.

- b. Any other controlled substance classified as a Cannabis, depressant, hallucinogen, or stimulant, except the amphetamine like drugs listed in sub-section (1)a above, is guilty of a Class D offense, except that any person who delivers one pound or more of marijuana is guilty of a Class E offense.

(2) It is unlawful for any person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture, or deliver a controlled substance in or on one thousand feet [300.48 meters] of the real property comprising a public school or preschool, or a public or private playground, or a tribal youth center or gymnasium, is guilty of a Class E offense and is subject to a one-year term of imprisonment. It is not a defense that the defendant did not know the age of a person protected under this subdivision.

(3) It is unlawful for any person at least eighteen years of age who solicits, induces, intimidates, employs, hires or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a Class E offense.

(4) It is unlawful for any person to willfully, possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's practice. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana is guilty of a Class C offense. Any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana is guilty of a Class B offense. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a Class D offense.

(5) A person who violates this section must undergo a drug addiction evaluation by an appropriate licensed addiction treatment program. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. The evaluation must be submitted to the Court for consideration when imposing punishment for a Class E offense, and may be submitted before or after the imposing of punishment for a Class B through Class C offense for violation of this section.

Section 88. Driving under the influence (DUI).

(1) Any person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this reservation if any of the following apply:

- a. That person has an alcohol concentration of at least .08 percent by breath at the time of the performance of a preliminary breathalyzer test.
- b. That person is under the influence of an alcoholic beverage or controlled substance.
- c. That person is under the influence of any controlled substance or a combination of controlled substances to a degree which renders that person incapable of safely driving.
- d. That person is under the combined influence of alcohol and any other controlled substance to a degree which renders that person incapable of safely driving.

(2) A person violating this section is guilty of a Class B offense for the first or second offense, of a Class C offense for a third offense, of a Class D offense for the fourth offense, of a Class E offense for a fifth or subsequent offense, and of a Class E offense for inflicting serious bodily injury or death to another. The Court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the Court or may make a subsequent offense finding based on other evidence.

(3) Upon conviction of a second or subsequent offense under this section, the Court may order that person's driving privileges revoked from this reservation for one year, or where serious bodily injury or property damage was a result thereof, for a period of two years. The Court may make an exception to this subsection, on an individual basis, to avoid undue hardship to an individual who is completely dependent on the driving privilege for the necessities of life such as, regular employment.

Section 89. Drunkenness.

Any person who appears in any public or private place manifestly under the influence of an alcoholic beverage to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity, is guilty of a Class A offense.

Section 90. Unlawful inhalation.

Any person who knowingly smells or inhales the fumes of any type of substance containing a solvent, material substance, chemical, or combination thereof, having the property of releasing toxic vapors or fumes, or who induces any other person to do so, for the purpose of causing symptoms of intoxication or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes is guilty of Class C offense. Provided however, nothing herein shall be construed to apply to the inhalation of any anesthesia or other substance for legitimate medical or dental treatment.

Section 91. Unlawful delivery of drug paraphernalia to a minor.

Any person eighteen years of age or over may not deliver drug paraphernalia, in violation of Section 87, to a person under eighteen years, is guilty of a Class C offense.

Section 92. Unlawful manufacture or delivery of a drug paraphernalia.

Any person may not deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, if that person knows or should reasonably know that the drug paraphernalia will be used 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 a controlled substance in violation of Section 87, is guilty of a Class B offense.

Section 93. Unlawful possession of drug paraphernalia.

(1) Any person may not use or 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 a controlled substance in violation of Section 87, is guilty of a Class C offense.

(2) In this section “Drug paraphernalia” are any objects created or used specifically for producing, analyzing, preparing, storing, or administering any illegal or counterfeit illegal substance. In determining whether an object is drug paraphernalia, consideration should be given to all logically relevant factors, including, but not limited to, the following:

- a. statements made by an owner or anyone in control of the object concerning its use;
- b. the proximity of the object in time and space to a direct violation of this section;
- c. prior convictions, if any, of an owner, or of anyone in control of the object, under the laws of any jurisdiction relating to any illegal or counterfeit illegal substance;
- d. the existence and scope of legitimate uses for the object in the community.

Section 94. Unlawful possession of alcohol.

Any person may not use or possess with intent to use an alcoholic beverage to sell, trade, transport, manufacture, ingest or otherwise introduce into the human body any alcoholic beverage or any article whatsoever which produces alcoholic intoxication, without a license or permit that may be issued by the Tribal Council, is guilty of a Class B offense.

Inchoate Offenses

Section 95. Criminal attempt.

(1) A person is guilty of an offense, if acting with the kind of culpability otherwise required for commission of an offense, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the crime. A “substantial step” is any conduct which is strongly corroborative of the firmness of the actor’s intent to complete the commission of the crime. Factual or legal impossibility of committing the crime is not a defense, if the crime could have been committed had the attendant circumstances been as the actor believed them to be.

(2) A person who engages in conduct intending to aid another to commit an offense is guilty of the offense if the conduct would establish his complicity under Section 105, were the offense committed by the other

person, even if the other is not guilty of committing or attempting the offense, for example, because he has a defense of justification or entrapment.

Section 96. Accomplices.

- (1) A person may be convicted of an offense based upon the conduct of another person when:
- a. Acting with the kind of culpability required for the offense, he causes the other to engage in such conduct;
 - b. With intent that an offense be committed, he commands, induces, procures, or aids the other to commit it, or, having a statutory duty to prevent its commission, he fails to make proper effort to do so; or
 - c. He is a coconspirator and his association with the offense meets the requirements of either of the other subdivisions of this subsection.

A person is not liable under this subsection for the conduct of another person when he is either expressly or by implication made not accountable for such conduct by the statute defining the offense or related provisions because he is a victim of the offense or otherwise.

(2) Unless otherwise provided, in a prosecution in which the liability of the defendant is based upon the conduct of another person, it is no defense that:

- a. The defendant does not belong to the class of persons who, because of their official status or other capacity or characteristic, are by definition of the offense the only persons capable of directly committing it; or
- b. The person for whose conduct the defendant is being held liable has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

Criminal Liability

Section 97. State of mind.

(1) General Requirements of Culpability. A person is not guilty of an offense unless he acted, knowingly, recklessly, negligently, or willfully as the law may require, with respect to each material element of an offense, or unless the person's acts constitute an offense involving strict liability.

(2) Kinds of Culpability. Defined:

- a. Knowingly. A person acts knowingly with respect to a material element of an offense when:
 - i. If the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and
 - ii. If the element involves a result of his conduct he is aware that it is practically certain that his conduct will cause such a result.

b. Recklessly. A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

c. Negligently. A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

- d. Willfully. When a person engages in the conduct knowingly or recklessly.

Section 98. Strict liability.

The requirements of culpability prescribed in Section 98 do not apply to:

- a. offenses which constitute violations, unless the requirement involved is included in the definition of the offense or the Court determines that its application is consistent with effective enforcement of the law

defining the offense; or

b. offenses defined by statutes other than this Chapter, insofar as the Tribal Council's purpose to impose absolute liability for such offenses or with respect to any material element thereof plainly appears.

Section 99. Requirement of voluntary act; omission as basis of liability; possession as an act.

(1) A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable. The following are not voluntary acts within the meaning of this Code:

- a. a reflex or convulsion;
- b. a bodily movement during unconsciousness or sleep;
- c. conduct during hypnosis or resulting from hypnotic suggestion;
- d. a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(2) Liability for the commission of an offense may not be based on an omission unaccompanied by action unless:

- a. the omission is expressly made sufficient by the law defining the offense; or
- b. duty to perform the omitted act is otherwise imposed by law.

(3) Possession is an act, within the meaning of this Chapter, if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.

Section 100. Causation.

(1) Conduct is the cause of a result when:

- a. it is an antecedent but for which the result in question would not have occurred; and
- b. the relationship between the conduct and result satisfied any additional casual requirements imposed by this Chapter or by the law defining the offense.

Section 101. Juveniles.

Persons under the age of seven years are deemed incapable of commission of an offense defined by the statutes of this tribe. The prosecution of any person as an adult is barred if the offense was committed while the person was less than fourteen years of age.

Section 102. Intoxication.

Intoxication is not a defense to a criminal charge. For the purposes of this Chapter, repeated criminal or similar antisocial conduct, or impairment of mental condition caused primarily by voluntary use of alcoholic beverages or controlled substances immediately before or contemporaneously with the alleged offense, does not constitute in itself mental illness or defect at the time of the alleged offense.

Evidence of intoxication is admissible whenever it is relevant to negate or to establish an element of the offense charged. A person is reckless with respect to an element of an offense even though his disregard thereof is not conscious, if his not being conscious thereof is due to voluntary intoxication.

Section 103. Mentally unfit defendants.

No person who, as a result of mental illness or defect, lacks capacity to understand the proceedings against the person or to assist in the person's own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

Section 104. Justification.

Except as otherwise expressly provided, justification or excuse under this chapter is a defense. If a person is justified or excused in using force against another, but he recklessly or negligently injures or creates a risk of injury to other persons, the justifications afforded by this chapter are unavailable in a prosecution for such recklessness or negligence. That conduct may be justified or excused within the meaning of this chapter does not abolish or impair any remedy for such conduct which is available in any civil action.

Section 105. Self-defense.

A person is justified in using force upon another person to defend himself against danger of imminent unlawful bodily injury, sexual assault, or detention by such other person, except that:

1. A person is not justified in using force for the purpose of resisting arrest, execution of process, or other performance of duty by a public servant under color of law, but excessive force may be resisted.
2. A person is not justified in using force if:
 - a. He purposely provokes unlawful action by another person to cause bodily injury or death to such other person; or
 - b. He has entered into a mutual combat with another person or is the initial aggressor unless he is resisting force which is clearly excessive in the circumstances. A person's use of defensive force after he withdraws from an encounter and indicates to the other person that he has done so is justified if the latter nevertheless continues or menaces unlawful action.

Section 106. Defense of others.

A person is justified in using force upon another person in order to defend anyone else if:

- a. The person defended would be justified in defending himself; and
- b. The person coming to the defense has not, by provocation or otherwise, forfeited the right of self-defense.

Section 107. Limits on the use of force - Excessive force.

A person is not justified in using more force than is necessary and appropriate under the circumstances. Excessive force is justified in the following instances:

- a. When it is expressly authorized by law.
- b. When used in lawful self-defense, or in lawful defense of others, if such force is necessary to protect the actor or anyone else against death, serious bodily injury, or the commission of a Class E offense involving violence. The use of excessive force is not justified if it can be avoided, with safety to the actor and others, by retreat or other conduct involving minimal interference with the freedom of the person menaced.

Sentencing - Classification of Offenses - Limitations

Section 108. Sentencing.

(1) A person convicted of an offense enumerated in this Chapter may be sentenced as follows:

- a. for a conviction of a Class A offense, the offender may only be sentenced to pay a fine not to exceed \$800 or some other sentence not involving imprisonment;
- b. for a conviction of a Class B offense, the offender may be sentenced to imprisonment for a period not to exceed 90 days, or a fine not to exceed \$1,500, or both, unless another sentence is specified by statute;
- c. for a conviction of a Class C offense, the offender may be sentenced to imprisonment for a period not to exceed 180 days, or a fine not to exceed \$2,500, or both, unless another sentence is specified by statute;
- d. for a conviction of a Class D offense, the offender may be sentenced to imprisonment for a period not to exceed 270 days, or a fine not to exceed \$3,500 or both, unless another sentence is specified by statute;
- e. for a conviction of a Class E offense, the offender may be sentenced to imprisonment for a period not to exceed one year, but not less than 270 days, or a fine not to exceed \$5,000 or both, unless another sentence is specified by statute; or

(2) The fines listed above may be imposed in addition to any amounts ordered paid as restitution.

(3) Any person adjudged guilty of an offense under this Code shall be sentenced in accordance with this section.

Section 109. Classification of offenses.

Offenses shall be designated as Class A, Class B, Class C, Class D, or Class E offenses. The Tribe shall exercise exclusive jurisdiction over all classification of offenses, except however, if an offense was committed within the State of Oregon, in accordance with Chapter 1 of the Fort McDermitt Law & Order Code, then the offense shall be concurrent to that of the State of Oregon.

Section 110. Statutes of limitation.

(1) Unless otherwise specified by statute:

- a. Prosecution for any Class A, Class B, Class C, or Class D offense must be commenced within two years after the alleged offense was committed or discovered;
- b. Prosecution for any Class E offense must be commenced within four years after the allegation is committed;
- c. If the victim is a minor or has a mental disorder at the time the offense occurred, prosecution must be commenced within one year after the minor reaches the age of eighteen or after the legal disability terminates.

(2) The period of limitation does not run under the following conditions:

- a. During any period in which the offender is not usually and publicly residing on the Fort McDermitt Indian Reservation or is beyond the jurisdiction of the Tribal Court;
- b. During any period in which the offender is a tribal official and the offense charged is theft of tribal funds when in tribal office;
- c. During a prosecution pending against him for the same conduct even if the prosecution is dismissed.

(3) An offense is committed either when every element occurs or, if the offense is based upon a continuing course of conduct, when the course of conduct is terminated. The time starts to run on the day after the offense is committed.

(4) A prosecution is commenced when a complaint is filed.

Section 111. General definitions. As used in this Chapter, unless a different meaning plainly is required or otherwise specified in a particular offense or section:

1. **Adult** is one who has attained the age of eighteen years.
2. **Abandonment** means foregoing parental duties as it is relative to children.
3. **Act** or **action** means a bodily movement, whether voluntary or involuntary.
4. **Acted, acts, and actions** include, where relevant, “omitted to act” and “omissions to act”.
5. **Actor** includes, where relevant, a person guilty of an omission.
6. **Alcoholic Beverage** is a liquid compound and which, when drunk to excess, will produce intoxication; shall include but not be limited to liquor, distilled spirits, wine, beer and malt beverages.
7. **BIA** means the Bureau of Indian Affairs within the U.S. Department of the Interior.
8. **Bodily Injury** means any impairment of physical condition and includes any physical pain or harm.
9. **Bribe** signifies any money, goods, right in action, property, things of value, or advantage, present or prospective, asked, promised, given, or accepted, with a corrupt intent to influence unlawfully the recipient or prospective recipient, in his action, vote, or opinion in any tribal or official capacity.
10. **Controlled Substance** means any illegal drug or dope as listed in Section 87(2) of this Code, which when used in sufficient quantities, ordinarily or commonly produces intoxication.
11. **Corrupt** means to change ones morals and principals from good to bad, by wrongfully using his character to procure some benefit for himself or for another person, contrary to the rights of others.
12. **Court** means any of the following courts where relevant: tribal court, juvenile court, and drug court.
13. **Deadly weapon** is any firearm, or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury. Such weapons or instruments are made and designed for offensive or defensive purposes, or for the destruction of life or the infliction of injury.

14. **Defendant** is the person defending or denying; the party against whom relief or recovery is sought in an action or suit or the accused in a criminal case.
15. **Destructive Device** means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile, or similar device, whether manufactured or homemade.
16. **Dwelling** means any building or structure, though movable or temporary, or a portion thereof, which is for the time being a person's home or place of lodging.
17. **Explosive** means gun powders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.
18. **Family member** means mother, father, children, brother, sister, aunts, uncles, cousins and other past or present family members of the household. This relationship includes those created by adoption and remarriage, including stepchildren, stepparents, and adoptive children and parents. The relationships continue regardless of the ages of the parties and whether the parties reside in the same household.
19. **Force** means physical action.
20. **Harm** means loss, disadvantage, or injury to the person affected, and includes loss, disadvantage, or injury to any other person in whose welfare he is interested.
21. **Government Record** means any record, document, or thing belonging to, or received or kept by the tribal government, including its subagencies or committees, for information or record. Including any other record, document or thing required to be kept by federal, state or tribal law, pursuant, in fact, to a statute which expressly invokes the sanctions of this section under contract for services provided through or for the Fort McDermitt Tribe.
22. **Indian** is any person who is a member of any Indian tribe, band, or village; or who has any degree of Indian blood; or is regarded as an Indian by the society of Indians among whom he lives.
23. **Intent** is one who voluntarily commits a prohibited act is presumed to have intended that act. The person charged need not have been aware that the law made the act criminal.
24. **Intoxication** is a condition caused from an alcoholic beverage or a controlled substance (drug) which when used in sufficient quantities, will cause someone to lose control of their inherent mental or physical power.
25. **Law Enforcement or Police Officer** means any person who by virtue of his office of public or tribal employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.
26. **Lawful Fence** is any fence erected upon tribal lands by an order of, or by and between agreement with the Tribal Council through assignment or lease and whether temporary or permanent, including such that may be erected around a yard or assignment boundary and may consist of barbed or non-barbed wire, wood, or other material that is ordinarily used in fencing.
27. **Liquor** is an alcoholic beverage made by distillation; to be contrasted with wines which are made by fermentation.
28. **Livestock** includes bison, cattle, goats, horses, mules, sheep, and swine.
29. **Maliciously** imports a wish to vex, annoy, or injure another, or an intent to do a wrongful act, and may consist in direct intention to injure, or in reckless disregard of another's rights.
30. **Marijuana** includes all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of such plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks (except the resin extracted therefrom) fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.
31. **Minor** is a person who is under the age of eighteen years and/or is less than the age designated by the particular section of the statute enumerated in this code.

32. **Non-Member** is any person who is of any degree of American Indian descent and a member of or eligible for membership in any Indian tribe other than the Fort McDermitt Tribe, including persons not of American Indian descent.
33. **Offender** means a person who has been or is liable to be arrested, charged, convicted, or punished for a tribal offense under the jurisdiction of the Fort McDermitt Tribal Court.
34. **Offense** means a crime for which a sentence of labor, confinement, a fine, restitution, or other penalty provided by law that may be imposed.
35. **Person** is an individual (human being), association, corporation, partnership or other legal entity as recognized through charter by this Tribe or of any of the states of the United States.
36. **Personal property** is everything that is the subject of ownership, which includes, tangible and moveable things, not coming under denomination of real estate (real property), and includes animals, furniture, merchandise, money, goods, chattels, things in action, and evidences of debt.
37. **Playground** means any outdoor facility, including any parking lot appurtenant thereto, intended for recreation by children.
38. **Possession** is the knowing control of anything for a sufficient time to be able to terminate control.
39. **Public** means affecting or likely to affect persons in a place to which the public or a substantial group of people has access, including highways, schools, health facilities, tribal and government buildings, traditional and ceremonial buildings, grounds or sites.
40. **Public Servant** is any person who by virtue of his public office, employment, or appointment, of whatever rank or position and subject to direction or control of the Paiute and Shoshone Tribe in any department, service, or committee thereof; including the Members of Tribal Council.
41. **Practitioner** means a physician, dentist, veterinarian, pharmacist, or other person licensed, registered, or otherwise permitted by the jurisdiction in which the individual is practicing to distribute, dispense, or to administer a controlled substance in the course of his professional practice, and includes medicine men, holy men, spiritual leaders or roadmen as recognized by those whom regard him as such.
42. **Real Property** is every estate, interest, and right in tribal lands, tenements, and hereditaments.
43. **Reservation** means all tribal lands within the territory boundaries of the Fort McDermitt Reservation that lie within the States of Nevada or Oregon, as used by Fort McDermitt residents and including individual allotment lands within the reservation for purposes of this code, Hog John Ranch, and all tribal fee lands.
44. **Serious Bodily Injury** means bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of the function of any bodily member or organ, or a bone fracture.
45. **Sexual Act** means sexual contact between persons consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any other portion of the human body and the penis, anus or vulva; or the use of an object which comes in contact with the victim's anus, vulva, or penis. For the purposes of this Chapter, sexual contact between the penis and the vulva, the penis and the anus, any other portion of the human body and the anus or vulva, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.
46. **Sexual Contact** means any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires.
47. **Signature** is the act of putting one's name, mark, or sign on an instrument to attest its validity; the name thus written. It may be written by hand, printed, stamped, typewritten, photographed, engraved or electronically; it being immaterial with what kind of instrument a signature is made.
48. **Substantial Bodily Injury** means a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ.
49. **Solicit** means to command, authorize, urge, incite, request or advise another to commit an offense.
50. **Tribal** means in place of "public" when reference is to tribal governmental function or operation; means

of, concerning, or available to the tribal members as a tribe; of or involved in the affairs of the reservation community, especially in the tribal government.

51. **Tribal Council** means the assembly of the eight member governing body known as the Fort McDermitt Tribal Council, as empowered by the tribe's Constitution and Bylaws.
52. **Tribal Official** is any elected or appointed person holding an office or seat on the Tribal Council and having duties relating to the sovereign powers of the tribe. This term does not apply to tribal employees having purely ministerial duties.
53. **Tribe** means the Fort McDermitt Paiute and Shoshone Tribe.
54. **Unlawful** means when a person acts unlawfully with respect to a result or conduct described by statutes defining an offense when the offense involves the nature of his conduct or a result thereof, and without lawful authority from a law enforcement officer, the Tribal Court, or other statute or order promulgated by the Tribal Council.
55. **Under the Influence** means when a person voluntarily and unlawfully introduces into his body, any alcoholic beverage or controlled substance, or any combination thereof, which produces intoxication either by inhalation, ingestion, or injection.
56. **Vehicle** means any device used for transportation by land, water, or air or mobile equipment with provisions for transport of an operator.
57. **Vicious Dog** is defined as one which when unleashed bites, attempts to bite, harasses, or chases any person without provocation or which harasses, chases, bites, or attempts to bite livestock or any other kind of animal.
58. **Wanton** means a reckless disregard for the consequences in a grossly negligent and careless manner.
59. **Weapon** is an instrument of offensive or defensive combat, or anything used, or designed to be used, in destroying, defeating or injuring a person.
60. **Writing** means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.
61. **Willfully** means when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or omission referred to.
62. **Youth center** means any recreational facility and/or gymnasium, including any parking lot appurtenant thereto, commonly used by persons under the age of eighteen; or facility which regularly provides or promotes, athletic, civic or traditional activities for the tribe.

Words used in the singular include the plural, and the plural the singular. Words in the masculine gender include the feminine and neuter genders. Words used in the present tense include the future tense, but exclude the past tense.