

Ordinance No. _____
Uintah and Ouray Agency
Fort Duchesne, Utah

LAW AND ORDER CODE

TITLE XIII, UTE INDIAN CRIMINAL CODE, AMENDED AND RESTATED

BE IN ENTACED BY THE UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE OF THE UTE INDIAN TRIBE by virtue of its inherent authority as a sovereign Indian tribe to regulate the use and disposition of property of the Uintah and Ouray Reservation and to control the conduct of persons thereon, such authority being recognized and confirmed by the Act of Congress of June 18, 1934, 48 Stat. 984, and pursuant to the powers of the Tribal Business Committee, as enumerated in the Constitution of the Ute Indian Tribe at Article VI, Section (1) to safeguard and promote the peace, safety, morals and general welfare of the Tribe by regulating the use and disposition of property of the Reservation, that it hereby amends the Ute Indian Criminal Code, said Ute Indian Criminal Code being attached hereto and to appear as Title XIII of the Ute Law and Order Code.

CERTIFICATION

I hereby certify that this Ordinance was adopted by the Uintah and Ouray Tribal Business Committee at a Tribal Business Committee meeting held in Fort Duchesne, Utah, on the _____ day of _____, 20____, by a vote of _____ FOR, _____ AGAINST, _____ ABSENT and _____ ABSTAINING.

Secretary, Uintah and Ouray
Tribal Business Committee

APPROVED: _____
Johnna Blackhair, Superintendent
Uintah and Ouray Agency

DATE: _____

TITLE XIII - UTE INDIAN CRIMINAL CODE

I. GENERAL PROVISIONS

A. Introductory Provisions

§13-1-1. Name and Citation.

This title shall be known and may be cited as the "Ute Indian Criminal Code," and references in this part to "Code" shall refer to this Code unless another is clearly indicated.

§13-1-2. Effective Date.

This Code shall apply to all offenses as herein defined occurring on or after its effective date. If all or any part of any offense was committed prior to such date, the offense shall be governed by the prior existing law except that defenses enumerated herein shall apply to all offenses tried after the effective date.

§13-1-3. Purpose and Construction.

(1) The provisions of this Code shall be construed in accordance with these general principles and purposes:

(a) to forbid and prevent the commission of offenses and give fair warning of conduct which is declared to be an offense;

(b) to define adequately the conduct and mental state which constitute each offense and safeguard conduct that is without fault from condemnation;

(c) to prescribe penalties which are proportionate to the seriousness of the offense and which permit recognition of differing rehabilitative needs of individual offenders while at the same time recognizing the need of society to protect itself, when necessary, from offenders

(d) to prevent arbitrary and oppressive treatment of persons accused or convicted of offenses and to promote the correction and rehabilitation of such persons.

(2) This Code shall not be strictly construed but shall be construed according to the fair import of the terms used to promote fairness and justice and accomplish the general purposes set forth herein.

§13-1-4. Exclusiveness of Offenses.

No conduct constitutes an offense unless so declared by this Code, or by any other provisions of this Law and Order Code, or by any other Tribal resolution or ordinance or by federal law.

§13-1-5. Civil Liability Unaffected.

This Code does not change, suspend or otherwise affect any civil or other liability, other than criminal liability as defined herein, which would otherwise arise from any conduct defined herein.

§13-1-6. Severability.

If any provision of this Code or the application of any provision of this Code to any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby.

§13-1-7. Rights of Accused.

In all criminal prosecutions, the accused person shall have the right to defend himself in person or, at his own expense, by counsel; to demand the nature and cause of the accusation against him face to face; to have compulsory process served for obtaining witnesses in his behalf; to confront adverse witnesses; and to a speedy public trial by an impartial jury. No person shall be compelled in any criminal case to give evidence against himself or be twice put in jeopardy for the same offense; upon request, the accused or a juror shall be entitled to an interpreter.

§13-1-8. Fair Searches and Seizures.

Law Enforcement must obtain a search warrant, signed by a Judge eligible to preside over criminal cases involving a Class A offense before executing a search and/or seizure. A warrant shall be based on probable cause, must specifically describe the place(s) to be searched, the item(s) or person to be seized, and the reasons for which the warrant was issued.

B. Multiple Prosecutions and Double Jeopardy.

§13-1-9. Prosecution for Multiple Offenses.

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

- (1) one offense is included in the other; or
- (2) one offense consists only of a conspiracy, solicitation, or an attempt to commit the other; or
- (3) inconsistent findings of fact are required to establish the offenses; or
- (4) the offenses only differ in that one is defined to prohibit a specific kind of conduct and the other prohibits the same conduct generally; or
- (5) the offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the Code provides that specific periods of such conduct constitute separate offenses.

§13-1-10. Limitation.

Except as provided in the next section, below, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal episode, if such offenses are known to the prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction of the Ute Tribal Court.

§13-1-11. Separate Trials.

Upon application of any party and if justice so requires, the Court may order that separate trials be held for two or more offenses based on the same conduct or arising from the same criminal episode.

§13-1-12. Included Offenses.

(1) A defendant may be convicted of an offense included in an offense charged in the complaint without having been specifically charged with such included offense. An offense is so included when:

(a) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or

(b) it consists of an attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein; or

(c) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.

(2) The Court need not charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense.

§13-1-13. Double Jeopardy.

(1) If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode or the same facts as the original prosecution; a subsequent prosecution for the same or a different offense arising out of such episode or facts is barred if:

(a) the subsequent prosecution is for an offense that was or should have been tried under this Code in the former prosecution, unless such subsequent trial has been ordered as a separate trial by the judge; and

(b) the former prosecution:

(i) resulted in acquittal; or

(ii) resulted in conviction; or

(iii) was improperly terminated; or

(iv) was terminated by a final order of judgment for the defendant that has not been reversed, set aside or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.

(2) There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of facts or in a determination that there was insufficient evidence to warrant conviction. A finding of guilty of a lesser included offense is an acquittal of the greater offense even though the conviction for the lesser included offense is subsequently reversed, set aside, or vacated.

(3) There is a conviction if the prosecution resulted in a judgment of guilty that has not been reversed, set aside, or vacated; a verdict of guilty that has not been reversed, set aside, or vacated and that is capable of supporting a judgment; or a plea of guilty accepted by the Court.

(4) There is an improper termination of prosecution if the termination takes place before the verdict, is for reasons not amounting to an acquittal, and takes place after a jury has been impanelled and sworn in, or, if the matter was to be tried without a jury, after the first witness is sworn. However, termination of prosecution is not improper if:

(a) the defendant consents to the termination; or

(b) the defendant waives his right to object to the termination; or

(c) the Court finds and states for the record that the termination is necessary because:

i) it is physically impossible to proceed with the trial in conformity to the law; or

ii) there is a legal defect in the proceeding not attributable to the prosecution that would make any judgment entered upon a verdict reversible as a matter of law; or

(iii) prejudicial conduct in or out of the court room not attributable to the prosecution makes it impossible to proceed with the trial without injustice to the defendant or to the prosecution; or

(iv) the jury is unable to agree on a verdict; or

(v) a false statement of a juror on *voire dire* prevents a fair trial.

(5) A subsequent prosecution of an offense is not barred if the former prosecution resulted in a judgment of guilt held invalid in a subsequent proceeding on a writ of habeas corpus, *coram nobis* or similar collateral attack.

(6) Prosecution of an offense is not barred by virtue of the fact that the defendant could be or has been charged under 18 U.S.C.A. §1153 (so-called Major Crimes Act) unless such charge has, in fact, resulted in a conviction or acquittal of the defendant by a federal court following trial.

C. Burden of Proof

§13-1-14. Burden and Presumption of Innocence.

(1) A defendant in a criminal proceeding is presumed to be innocent until each element of the offense against him is proved beyond a reasonable doubt. In the absence of such proof the defendant shall be acquitted.

(2) By "element of the offense" is meant:

(a) the conduct, attendant circumstances or results of conduct proscribed, prohibited, or forbidden in the definition of the offense; plus

(b) the culpable mental state required; but

(c) jurisdiction is not an element of the offense nor is the statute of limitations or any other matter similarly unconnected with the harm or evil, incident to conduct, sought to be prevented by the offense nor is the existence of justification or excuse as defenses to the offense, and such may be established by a preponderance of the evidence.

§13-1-14. Right to Obtain Exculpatory Evidence.

A Defendant shall have the right to obtain evidence in the prosecutor's possession that is material to the defendant's guilt or punishment.

§13-1-15. Negating Defenses.

The prosecution need not negate any defense either in the complaint or by proof unless the defense is in issue as a result of evidence presented at trial by either side, or unless the defense is an affirmative defense, and the defendant has presented evidence of such.

§13-1-16. Presumptions of Fact.

An evidentiary presumption established by this Code has the following consequences:

(1) When the evidence of facts which support the presumption exist, the issue of the existence of the presumed fact must be submitted to the jury unless the Court is satisfied that the evidence as a whole clearly negates the presumed fact;

(2) In submitting the issue of the presumed fact to the jury, the Court shall charge the jury that while the presumed fact must on all evidence be proved beyond a reasonable doubt, the law regards the facts that give rise to the presumed fact as evidence of the presumed fact.

II. PRINCIPLES OF CRIMINAL RESPONSIBILITY

§13-2-1. Acts and Omissions to 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.

(2) The following are not voluntary acts within the meaning of this section:

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

(3) 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) a duty to perform the omitted act is otherwise imposed by law.

(4) Possession is an act, within the meaning of this section, 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.

§13-2-2. Culpability General Requirements.

(1) A person is not guilty of an offense unless he acted purposely, knowingly, recklessly, or negligently, as the law may require, with respect to each element of the offense, or unless his acts constitute an offense involving strict liability.

(2) Kinds of culpability defined are:

(a) Purposely: a person acts purposely with respect to an element of an offense when:

- i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and
- ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances, or he believes or hopes that they exist.

(b) Knowingly: a person acts knowingly with respect to an 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.

(c) Recklessly: a person acts recklessly with respect to an element of an offense when he consciously disregards a substantial and unjustifiable risk that the 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.

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

(e) Strict Liability: an element of an offense shall involve strict liability only when the definition of the offense or element clearly indicated a legislative purpose to impose strict liability for an element of the offense by use of the phrase "strict liability" or other terms of similar import, and when so used no proof of a culpable mental state is required to establish the commission of the element or offense.

(3) When the culpability sufficient to establish an element of an offense is not specifically prescribed, such element is established if a person acts purposely, knowingly, or recklessly with respect thereto.

(4) When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

(5) When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely, knowingly or recklessly. When recklessness suffices to establish an element, such element is also established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element is also established if a person acts purposely.

(6) When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the offense.

(7) When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is or should be aware of a high probability of its existence, unless he actually believes that it does not exist.

(8) A requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.

(9) Neither the knowledge nor recklessness nor negligence as to whether conduct constitutes an offense or as to the existence, meaning or application of the law determining the elements of an offense is an element of such offense, unless the definition of the offense so provides.

(10) When the grade or degree of an offense depends on whether the offense is committed purposely, knowingly, recklessly, or negligently, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any element of the offense.

§13-2-3. Causal Relationships Between Conduct and Result.

(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 cause and result satisfies any additional causal requirements imposed by this Code or the definition of the offense.

(2) When a particular mental state is specified in conjunction with an element of an offense, proof of that element is not avoided because the actual result differed from that intended or that which was probable or likely under the circumstances either in kind or degree or because a different person or different property was injured or affected than that intended or than that which was probable or likely under the circumstances, unless such differences are sufficient without consideration of the mental state involved to constitute a defense or avoidance or unless such differences are of such a magnitude that it would be unjust to find the element involved in light of such differences.

§13-2-4. Ignorance or Mistake.

(1) Ignorance or mistake as to a matter of fact or law is a defense only if:

(a) the ignorance or mistake negates a specific mental state required to establish an element of the offense; or

(b) the law provides that the actual state of mind which existed itself constitutes a defense.

(2) Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is not available if the defendant would be guilty of another offense if the situation had been as he supposed in which the punishment available upon conviction shall not exceed that prescribed for the other offense.

(3) A belief that conduct does not legally constitute an offense is a defense for prosecution of an offense based on that conduct only when:

(a) the enactment defining the offense is not known to the actor and has not been published or reasonably made available prior to the conduct alleged; or

(b) the actor acted in reasonable reliance upon an official statement of law contained in a subsequent enactment or an interpretation rendered by a judge or presiding Tribal body in a written opinion. In either case the defendant shall have the burden of proving, by a preponderance of the evidence, his defense under this subsection.

§13-2-5. Liability for Conduct of Another.

(1) A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for whom he is legally accountable, or both.

(2) A person is legally accountable for the conduct of another person when:

(a) acting with the kind of culpability that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct; or

(b) he is made accountable for the conduct of such other person by this Code or the definition of the offense; or

(c) he is an accomplice of such other person in the commission of the offense.

(3) A person is an accomplice of another person in the commission of an offense if:

(a) with the purpose promoting or facilitating the commission of an offense, he

i) solicits such other person to commit it; or

ii) aids or agrees or attempts to aid such other person in planning or committing it; or

iii) having legal duty to prevent the commission of the offense, fails to make proper effort to do so;
or

(b) his conduct is expressly declared by law to establish his complicity.

(4) When causing a particular result is an element of an offense an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.

(5) A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by the conduct of another person for whom he is legally accountable, unless such liability is inconsistent with the purpose of his incapacity.

(6) Unless otherwise provided by the Code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:

(a) he is a victim of that offense; or

(b) the offense is so defined that his conduct is inevitably incident to its commission; or

(c) he terminates his complicity prior to the commission of the offense and

i) wholly deprives it of effectiveness in the offense; or

ii) gives timely warning to law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

(7) An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has immunity from prosecution or has been acquitted.

§13-2-6. Corporations and Unincorporated Associations.

(1) A person is legally accountable for any conduct he performs or causes to be performed in the name of a corporation or unincorporated association or in its behalf to the same extent as if it were performed in his own name or behalf.

(2) Whenever a duty to act is imposed by law upon a corporation or unincorporated association, any agent of the corporation or association having primary responsibility for the discharge of the duty is legally accountable for a reckless omission to perform the required act to the same extent as if the duty were imposed by law directly upon himself.

(3) When a person is convicted of an offense by reason of his legal accountability for the conduct of a corporation or an unincorporated association, he is subject to the sentence authorized by law when a natural person is convicted of an offense of the class involved.

§13-2-7. Intoxication.

(1) Except as provided in subsection 4 of this section, intoxication of the actor is not a defense unless it negates an element of the offense.

(2) When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial.

(3) Intoxication does not, in itself, constitute a mental disease as that term is used in this Code.

(4) Intoxication which (a) is not self-induced, or (b) is the result of intoxication excessive in degree given the amount of intoxicant, to which result the actor does not know he is susceptible, is an affirmative defense if by reason of such intoxication the actor at the time of his conduct lacks substantial capacity either to appreciate its wrongfulness or to conform his conduct to the requirements of the law.

(5) "Intoxication" means a disturbance of mental or physical capabilities and/or capacities resulting from the introduction of substances into the body. Except as otherwise provided in this Code, intoxication can be proven by its external indications and no proof of specific consumption or blood alcohol content is necessary, though such is permissible to prove such.

§13-2-8. Duress.

(1) Except as herein otherwise provided, it is an affirmative defense that the actor engaged in conduct charged to constitute an offense because he was coerced to do so by the use of, or threat to use, unlawful force against his person or the person of another, which a law-abiding person of reasonable firmness in his situation would have been unable to resist.

(2) The defense provided in this section is unavailable to a person who intentionally, knowingly, or recklessly places himself in a situation in which it is probable that he will be subjected to duress.

(3) It is not a defense that a woman acted on the command of her husband, unless she acted under such coercion as would establish a defense under subsection 1 above. No presumption of duress arises from the mere presence of the husband at the time a woman acted.

(4) The defense provided in this section is unavailable in any situation where the coerced conduct threatens to cause death or serious bodily harm to some person other than the actor or does in fact cause such harm.

§13-2-9. Consent.

(1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negates an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

(2) When conduct is charged to constitute an offense because it threatens to cause or causes bodily harm, consent to such conduct or to the infliction of such harm is a defense only if:

(a) the bodily harm consented to or threatened by the conduct consented to is not serious; or

(b) the conduct and the harm are reasonably foreseeable hazards of joint participation in a lawful athletic contest, competitive sport or other lawful activity; or

(c) the consent establishes a justification for the conduct under this Code.

(3) Unless otherwise provided by this Code or the law defining the offense, assent does not constitute consent if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute an offense; or

(b) it is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known to the actor to be unable to make a reasonable judgment as to the nature or the harmfulness of the conduct charged to constitute the offense; or

(c) it is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or

(d) it is induced by force, duress, or deception.

§13-2-10. Entrapment.

(1) A public law enforcement officer or official or a person acting in cooperation with such an official perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting an offense by either:

(a) making knowingly false representations designed to induce the belief that such conduct is not prohibited; or

(b) employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

(2) The defense afforded by this section shall be unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

(3) Except as provided in (2) above, a person prosecuted for an offense shall be acquitted if he proves by a preponderance of the evidence that his conduct occurred in response to an entrapment. The issue of entrapment shall be tried to and decided by the Court and not by the jury. Evidence of past offenses shall be admissible only if the defendant takes the stand in his own defense.

§13-2-11. Mental Disease or Defect.

(1) In any prosecution for an offense, it shall be a defense that the defendant, at the time of the conduct upon which the prosecution is based, as a result of mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.

(2) As used in this section, the terms "mental disease" or "defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(3) The defense afforded by this section shall not be available unless notice of intent to rely on such defense is given at least two weeks before trial. By giving such notice, the defendant will be deemed to have consented to be examined for the prosecution by not more than two professional medical or other experts for the purpose of ascertaining the state of defendant's mental health.

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

§13-2-12. Justification.

Conduct which is justified is a defense to prosecution for any offense based on the conduct. The defense of justification may be claimed:

(1) when the actor's conduct is in defense of persons or property or as otherwise described in the next succeeding 5 sections; or

(2) when the actor's conduct is reasonable and in fulfillment of his duties as a Tribal or governmental officer or employee; or

(3) when the actor's conduct is reasonable discipline of minors by parents, guardians, teachers or other persons in loco parentis; or

(4) when the actor's conduct is reasonable discipline of persons in custody under this Code.

§13-2-13. Force in Defense of Persons.

(1) A person is justified in threatening or using force against another when and to the extent that he reasonably believes that such force is necessary to defend himself or a third person against such other's imminent use of unlawful force; however, a person is justified in using force which is intended or likely to cause death or serious bodily injury only if he reasonably believes that such force is necessary to prevent death or serious bodily injury to himself or a third person.

(2) A person is not justified in using force under the circumstances specified in 1) of this section if he:

(a) initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant; or

(b) is attempting to commit, committing, or fleeing after the commission of an offense; or

(c) was the aggressor or was engaged in a combat by agreement, unless he withdraws from the encounter and effectively communicates to such other person his intent to do so and the other notwithstanding continues or threatens to continue the use of unlawful force.

§13-2-14. Force in Arrest.

Any person is justified in using any force, except deadly force, which he reasonably believes to be necessary to effect an arrest or to defend himself or another from bodily harm while making an arrest.

§13-2-15. Deadly Force by Law Enforcement Officer.

A law enforcement officer, or any person acting by his command in his aid and assistance is justified in using deadly force when:

(1) in effecting the arrest or preventing an escape from custody following an arrest and the officer reasonably believes both that:

(a) such force is necessary to prevent the arrest from being defeated by resistance or escape; and

(b) the person to be arrested is attempting to escape by use of a deadly weapon.

(2) the officer is in the performance of his legal duty or the execution of legal process and reasonably believes the use of force is necessary to protect himself or others from imminent danger to life.

§13-2-16. Force in Defense of Habitation.

A person is justified in using force against another when and to the extent that he reasonably believes that the force is necessary to prevent or terminate the other's unlawful entry into or attack upon his place of habitation; however, he is justified in the use of force which is intended or likely to cause death or serious bodily injury only if:

(1) the entry is made or attempted in a violent and tumultuous manner and he reasonably believes that the entry is attempted or made for the purpose of assaulting or offering personal violence to any person, dwelling or person therein and that the force is necessary to prevent the assault or offer of personal violence; or

(2) he reasonably believes that the entry is made or attempted for the purpose of committing a Class A offense or other offense involving threat of bodily injury therein and that such force is necessary to prevent the commission of such offense.

§13-2-17. Force in Defense of Property.

A person is justified in using force, other than deadly force against another when and to the extent that he reasonably believes that force is necessary to prevent or terminate criminal interference with real or personal property:

(1) lawfully in his possession; or

(2) lawfully in the possession of his immediate family; or

(3) belonging to a person whose property he has a legal duty to protect.

§13-2-18. Justification of a Defense; Civil Remedies.

(1) In any prosecution based on conduct which is justified as specified in this Code, such justification is an affirmative defense.

(2) The fact that conduct is justifiable as specified in this Code does not abolish or impair any civil right or remedy which might arise from such conduct.

§13-2-19. Choice of Evils.

(1) Conduct which the actor believes to be necessary to avoid a harm or evil to himself or another is justifiable, provided that:

(a) the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and

(b) neither this Code nor any other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and

(c) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

(2) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his conduct, the justification afforded by this section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

III. SENTENCES AND PUNISHMENTS

A. Classification of Offenses

§13-3-1. Sentencing in General.

(1) A person adjudged guilty of an offense under this Code shall be sentenced in accordance with this part. Except anyone convicted under the Controlled Substances Subsection shall be sentenced under the penalties instituted in that subsection.

(2) Penal laws enacted or adopted after the effective date of this Code shall be classified for sentencing purposes in accordance with the provisions in this part.

§13-3-2. Designation of Offenses.

Offenses are designated as Class A offenses, Class B offenses, and Class C offenses.

§13-3-3. Class of Offense Not Specified.

Any offense for which no penalty or sentence is specified or which is not specifically designated as a certain class of offense shall be treated for purposes of sentencing and punishment as a Class C offense.

B. Sentencing

§13-3-4. General Principles.

The sentence imposed in each case should call for the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense, and the rehabilitative needs of the defendant.

§13-3-5. Sentences and Combinations of Sentences; Civil Penalties.

(1) A Court may, as provided in this part, sentence a person adjudged guilty of an offense to any one of the following sentences or a combination of such sentences:

(a) to pay a fine; or

(b) to removal from and/or disqualification of public or private office, but only if such is specifically provided for as a punishment for conviction of a specific offense; or

(c) to probation and/or suspension of sentence on such terms and conditions as the Court may direct; or

(d) to imprisonment or confinement, either full or part time.

(2) A Court shall also have the authority to order a person adjudged guilty of an offense to pay any or all of the following amounts or do the following acts:

(a) pay court costs not to exceed \$25.00; or

(b) pay any civil penalty provided by law; or

(c) pay money damages, surrender property, or perform any other act for the benefit of any person or party injured personally or in his property by the person adjudged guilty provided such injuries are fairly attributable to the act or failure to act constituting the offense for which guilt was adjudged.

(3) This part shall not deprive a Court of authority to cite for contempt, cancel or suspend a license, forfeit property, or do any other act or make any other order authorized by law.

§13-3-6. Restitution.

(1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense in which a victim is directly affected, the court may order, in addition to or in lieu of, any other penalty authorized by law, that the defendant make restitution to the victim of the offense or, if the victim is deceased, to the victim's estate.

(2) The Order of Restitution Shall be

(a) offense resulting in damage to or loss or destruction of property of a victim of the offense

i. Return of property to the owner or person designated by the owner

ii. If (i) is impossible, impracticable, or inadequate, pay an amount equal to

1. Greater of

a. the value of the property on the date of the damage, loss, or destruction

b. the value of the property on the date of sentencing, less

2. the value (as of the date the property is returned) of any part of the property that is returned;

a. offense resulting in bodily injury to the victim

i. pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

ii. pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

iii. reimburse the victim for income lost by such victim as a result of such offense

b. in the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

c. in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense

§13-3-7. Sentence and Fine.

1. Sentence Guidelines

a. Any person found guilty of a Class A offense under this subsection shall be sentenced to a minimum of 1 year jail time and/or a \$5,000 fine or community service. The maximum penalty shall be 3 years jail time and/or a \$15,000 fine or community service.

b. Any person found guilty of a Class B offense under this subsection shall be sentenced to a minimum of 6 months jail time and/or a \$2,500 fine or community service. The maximum penalty shall be 1 year jail time and/or a \$5,000 fine or community service.

c. Any person found guilty of a Class C offense under this subsection shall be sentenced to a minimum of 30 days jail time and/or a \$1000 fine or community service. The maximum penalty shall be 6 months jail time and/or a \$2,500 fine or community service.

(2) The terms of imprisonment listed above apply only to full time incarceration in the Tribal or some other jail or penitentiary and do not apply to full or part-time residence or confinement in a medical or rehabilitative facility as a condition of probation or parole as otherwise ordered by the court.

(3) The fines listed above may be imposed in addition to any assessment of costs, restitution, or other civil penalties ordered by the court.

§13-3-8. Payment of Fines and Other Monies.

(1) Fines shall be paid in cash unless upon request of the defendant the Court allows payment by commodities of like value, or by other means.

(2) The Court may, upon request of a defendant or upon its own motion, allow that any fines or other required payments be paid in installments and on conditions tailored to the means of the defendant.

(3) The imposition of incarceration should not be imposed as an automatic alternative to payment of a fine or other money, but rather a Court should upon default to pay a fine or other money as required, examine the reason for the default and may, if justice requires, impose an additional sentence of incarceration of no more than one day of incarceration for each \$4.00 of the required money left unpaid.

(4) The methods available for collecting a civil judgment shall be available to collect any unpaid money upon order of the Court following a failure to make any required payment and ascertainment of a reason therefor.

(5) When justice requires, the Court may revoke or remit a fine or any unpaid portion thereof or any other monies required to be paid, or may modify the terms and conditions of payment.

§13-3-9. Decision to Impose a Fine.

In determining whether to impose a fine and its amount, the Court should consider:

(1) The financial resources of the defendant and the burden that payment of a fine will impose with due regard to his other obligations;

(2) The ability of the defendant to pay a fine on an installment basis or on other conditions to be fixed by the Court;

(3) The extent to which payment of a fine will interfere with the ability of the defendant to make any ordered restitution or reparation to the victim of the crime; and

(4) Whether there are particular reasons which make a fine appropriate as a deterrent to the offense involved or appropriate as a corrective measure for the defendant.

§13-3-10. Concurrent and Consecutive Sentences.

(1) Unless the Court shall direct otherwise in its pronouncement of sentence, all sentences shall run concurrently and not consecutively.

(2) The Court shall consider the gravity and circumstances of the offenses and the history, character, and rehabilitative needs of the defendant as well as the need to protect the public in determining whether to impose consecutive sentences.

(3) The Court shall not impose consecutive sentences for offenses arising out of a single course of criminal conduct, including solicitation and criminal conspiracy; unless the criminal conduct involved the death or serious bodily injury of any victim of the crime or a serious threat of such, or unless the offense was committed in a willful, malicious or aggravated manner and involved an offense against the person of the victim or victims.

(4) A consecutive sentence shall not be imposed unless the Court has obtained and considered a pre-sentence report from the Department of Probation and Parole and/or the Board for the Disposition of Offenders.

(5) In no event shall the maximum term of imprisonment imposed exceed 3 years from the date of sentencing.

(6) Whenever a sentence is imposed or sentences are imposed to run concurrently with the other or with sentences presently being served, the greater sentence shall be the term to be served with all lesser sentences merging therein, or, if equal sentences are imposed, they shall merge into one sentence, but in no event shall the imposition of one sentence cut short the time to be served on another sentence unless the Court specifically directs that such be the result.

§13-3-11. Credit.

(1) Credit against a term of imprisonment imposed following an adjudication of guilty shall be given to a defendant for all time spent in custody as a result of the criminal charge for which the sentence is imposed or as a result of the conduct on which such charge is based. Such credit shall apply to time spent in custody prior to trial, during trial, pending sentence, and pending resolution of an appeal.

(2) In case of re-prosecution for any reason of the same offense or an offense based on the same conduct for which a defendant has been imprisoned, credit shall be given for all time spent in custody under the prior prosecution as provided in subsection 1) above.

(3) Credit as provided in this section should be considered and computed by the Court at the time of sentencing.

§13-3-12. Reduction of Sentences.

(1) The Court may, upon motion of any party or its own motion, reduce or modify a sentence within a reasonable time after its imposition as provided in the Rules of Criminal Procedure if new factors bearing on the sentence become known. Such reduction or modification shall be done in open court.

(2) In the event that commitment to a special type of facility other than a jail or penitentiary is imposed or accepted as a condition of probation or parole, the Court may for good cause shown terminate or reduce such commitment.

(3) The Court shall have authority to terminate at any time continued supervision or the power revoke either a sentence not involving confinement or a sentence involving less than total confinement in a jail or penitentiary. The Court shall also have the power to lessen the conditions on which such sentences were imposed or lessen the time in which the power to revoke will exist.

(4) Except as otherwise specifically provided in this part, the Court shall not increase a term of imprisonment once it has been imposed.

§13-3-13. Board for the Disposition of Offenders.

(1) The Tribal Business Committee shall appoint a Board for the Disposition of Offenders to be composed of the following:

(a) A doctor or psychiatry or psychology licensed to practice medicine or psychology in the State of Utah;

- (b) a criminologist or social worker with graduate training and a degree in such field from an accredited university;
- (c) a probation and parole officer from the Tribal Adult Probation and Parole Department;
- (d) the head of the Alcohol and Drug Abuse Rehabilitation program on the Reservation;
- (e) such other persons as the Committee believes would be appropriate on such a Board;
- (f) the trial judge who conducted the trial of an offender shall be a member of the Board for purpose of considering the disposition of such offender.

(2) The purpose and duties of the Board for the Disposition of Offenders in all cases referred to it as provided herein are:

- (a) with the aid of the Adult Probation and Parole Department, to compile and consider the history and background of an offender;
- (b) to consider the present social, economic, and family situation of the offender;
- (c) to consider the actual or potential threat of further criminal activity by the offender and the need to protect the public from such;
- (d) to consider the corrective and rehabilitative needs of the offender and the facilities available to the offender;
- (e) based upon consideration of such factors, to make a recommendation to the Court regarding the sentencing of an offender.

(3) The Court shall defer immediate sentencing following pronouncement of a judgment of guilty and refer the offender to the Board for the Disposition of Offenders for their sentencing recommendation in the following cases:

- (a) whenever the offender has been convicted of a Class A offense;
- (b) whenever the offender has been convicted of an offense involving the use of alcohol or drugs by the offender;
- (c) whenever the offender has been convicted of an offense involving the family relationship or involving any member of the offender's family as the victim of the offense;
- (d) whenever the offender is under 21 years of age at the time of sentencing;
- (e) whenever the Court shall be considering the imposition of consecutive sentences;
- (f) whenever the offender shall have been convicted of two or more prior offenses in the 12-month period preceding the judgment of guilty in the present cause;
- (g) whenever requested by the offender, unless such request reasonably appears to the Court to be for the sole purpose of delaying the pronouncement of sentence or some other improper motive;
- (h) whenever the judge deems it appropriate or desirable to do so.

(4) The Board shall forward its recommendations together with any written reports on the defendant which it has considered to the Court with as little delay as is reasonably possible. A majority vote of the Board members shall determine the Board's recommendation. In cases of disagreement, by the dissenting provided, however, that a minority recommendation may be included if desired Board members.

(5) The Court, upon receipt of the recommendations of the Board, shall consider and give weight to such recommendations but shall not be bound to follow such either in whole or in part, when pronouncing sentence on a defendant.

(6) In the event that the Board for the Disposition of Offenders has not been appointed or is for any reason unavailable or unable to meet, the Court shall not be required to defer immediate sentencing, but may, if it deems it advisable, defer sentencing and request such pre-sentence help as is available from Reservation sources.

§13-3-14. Sentencing Proceeding.

As soon as practicable after the determination of guilt and the examination of any pre-sentence reports or recommendations and following notice to defendant of the same, a proceeding should be held at which the Court shall:

- (1) hear submissions by the parties on the facts relevant to the sentence;
- (2) hear argument by the defendant or his counsel on the applicability of various sentencing alternatives to the facts of the case;
- (3) afford the defendant the opportunity to make a statement to the Court;
- (4) in cases where guilt was determined by plea, inform itself, if not previously informed, of the existence of plea discussions or agreements and the extent to which they involve recommendations as to the appropriate sentence;
- (5) make specific findings on all controverted issues of fact which are deemed relevant to the sentencing decision;
- (6) ascertain and consider all credits due the defendant as a result of prior periods of incarceration;
- (7) carefully state and assure that a record is made of the precise terms of the sentence imposed and assure that those responsible for executing the sentence be informed of such terms;
- (8) state for the record the reasons for selecting the particular sentence imposed, unless the Court deems it to be in the best interests of the defendant not to do so;
- (9) require that a record be kept of the sentencing proceeding with a verbatim recording or transcription of such if possible.

C. Suspension of Sentence and Probation

§13-3-15. Suspension of Sentence and Probation.

- (1) Except as otherwise provided in this Code, the Court shall have the authority to suspend the imposition of sentence on a person who has been convicted of an offense and place him on probation as provided herein.
- (2) When the Court suspends the imposition of sentence on a person who has been convicted of a crime or sentences him to be placed on probation, it shall attach such reasonable conditions, as authorized herein, as it deems necessary to insure that he will lead a law abiding life or likely to assist him to do so.
- (3) The Court, as a condition of its order of probation, may require the defendant:
 - (a) to meet his family responsibilities;
 - (b) to devote himself to a specific employment or occupation;
 - (c) to undergo available medical or psychiatric or other rehabilitative treatment and to enter and remain in a specified institution, when required for that purpose;

- (d) to pursue a prescribed secular course of study or vocational training;
- (e) to attend or reside in a facility established for the instruction, recreation or residence of persons on probation;
- (f) to refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;
- (g) to refrain from all use of intoxicants, narcotics, or drugs, the sale of which is controlled by the State or federal government, unless taken or used under a doctor's orders and obtained by a doctor's prescription;
- (h) to have in his possession no firearm or other dangerous weapon unless granted written permission by the Court or the Adult Probation and Parole Department;
- (i) to make restitution of the fruits of his crime or to make reparation, in an amount he can afford to pay, for the loss or damage caused thereby;
- (j) to remain within the jurisdiction of the Court and to notify the Court or the probation officer of any change of address or employment;
- (k) to report as directed to the Court or the probation officer and to permit the officer to visit his home;
- (l) to post a bond, with or without surety, conditioned on the performance of any of the foregoing obligations;
- (m) to satisfy any other conditions reasonably related to the rehabilitation of the defendant and not incompatible with his freedom of conscience or unduly restrictive of his liberty given his status as a probationer.

(4) When the Court sentences a person who has been convicted of a Class A offense or a Class B offense to be placed on probation, it may require him to serve a term of imprisonment not to exceed 30 days in the case of a Class A offense and 15 days in the case of a Class B offense as an additional condition of its order. Such term of imprisonment shall be counted as part of the period of the probation but shall not count as part of any sentence pronounced as a result of a revocation of probation.

(5) The defendant shall be given a copy of the requirements of his probation stated with sufficient specificity to enable him to guide himself accordingly.

§13-3-16. Period of Suspension or Probation; Modification.

(1) When the Court has suspended sentence or has sentenced a defendant to be placed on probation, the maximum period of the suspension or probation shall be 2 years, provided, however, that the maximum period will be imposed for Class B and C offenses only when such appears to be consistent with the rehabilitative needs of the defendant. Shorter periods may be imposed at the Court's discretion.

(2) During the period of suspension or probation, the Court, on application of the probation officer or of the defendant, or on its own motion, may modify the requirements imposed on the defendant or add further requirements consistent with the rehabilitative needs of the defendant or may discharge the defendant.

(3) Upon termination of the period of suspension or probation, or the earlier discharge of the defendant, the defendant shall be relieved of any obligations imposed by the order of the Court and shall have satisfied his sentence for the offense.

§13-3-17. Violation of Terms of Suspension or Probation.

(1) At any time before the discharge of the defendant or the termination of the period of suspension or probation:

- (a) the Court may summon the defendant to appear before it or it may issue a warrant for his arrest;

(b) a probation or law enforcement officer, having probable cause to believe the defendant has failed to comply with a requirement imposed as a condition of the probation order or that he has committed another crime, may arrest him without a warrant;

(c) the Court, if there is probable cause to believe that the defendant has committed another crime or if he has been held to answer therefor, may commit him without bail, pending a determination of the charge by the Court;

(d) the Court, if satisfied that the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the probation order, or if he has been convicted of another crime, may revoke the suspension or probation and sentence or re-sentence the defendant as provided in this Code.

(2) When the Court revokes a suspension or probation, it may impose on the defendant any sentence that might have been imposed originally for the crime for which he was convicted, except that the defendant shall not be sentenced to imprisonment unless:

(a) he has been convicted of another crime; or

(b) his conduct indicates that his continued liberty involves undue risk that he will commit another crime; or

(c) such disposition is essential to vindicate the authority of the Court.

(3) The Court shall not revoke suspension or probation or increase the requirements imposed thereby except after a hearing upon written notice to the defendant of the grounds on which such action is proposed. The defendant shall have the right to hear and controvert the evidence against him, to offer evidence in his defense and to be represented by counsel of his choice at his own expense.

(4) Whenever a defendant is taken into and held in custody as provided in this section for violation of probation conditions other than the alleged commission of an offense, he shall be entitled to have his sentence considered by the Court within 48 hours of his confinement, unless he requests further time to prepare his defense.

§13-3-18. Order Removing Disqualification or Disability Based on Conviction.

(1) When the Court has suspended sentence or has sentenced the defendant to be placed on probation and the defendant has fully complied with the requirements imposed as a condition of such order and has satisfied the sentence, the Court may order that so long as the defendant is not convicted of another offense, the judgment shall not constitute a conviction for the purpose of any disqualification or disability imposed by law upon conviction of a crime or offense.

(2) Proof of a conviction as relevant evidence upon the trial or determination of any issue or for the purpose of impeaching the defendant as a witness is not a disqualification or disability within the meaning of this section.

§13-3-19. Final Judgment.

A judgment suspending sentence or sentencing a defendant to be placed on probation shall be deemed tentative to the extent such is modifiable as provided herein, but for all other purposes shall constitute a final judgment.

D. Appeal.

§13-3-20. Right of appeal.

In any case where the Court has ordered the detention of any person, the Court must notify that person of his or her habeas corpus right to petition the United States District Court for a review and stay of his or her detention.

E. Parole.

§13-3-21. Eligibility for Parole.

(1) Except as otherwise provided herein, a defendant sentenced to and serving a term of imprisonment for more than 60 days shall be eligible to petition the Court for a grant of release on parole.

(2) Parole may be granted as provided herein to a defendant who has demonstrated good behavior and faithful performance of duties while incarcerated.

(3) Parole shall not be considered or granted to a defendant who has been convicted of an offense involving the death or serious bodily injury of a victim of the offense unless the defendant has been sentenced to consecutive sentences totaling in excess of one year and such consideration may be given only after the defendant has served one year under such sentences.

(4) The provisions on parole contained herein shall apply only to confinement in a jail or penitentiary and shall not apply to confinement ordered in a medical or rehabilitative facility.

§13-3-22. Petition for Parole.

(1) Parole may be granted by the Court on its own motion or on the petition of an incarcerated defendant.

(2) Any defendant eligible for parole as set forth above may petition the Court for consideration of parole. Such petition may be made on a form to be provided for such purposes by the Court, at a time no earlier than the expiration of half the period of imprisonment ordered by the Court. If a defendant desires, he will be allowed opportunity to contact and meet with counsel on the jail premises to aid him in the preparation of his petition for parole. The completed petition shall be forwarded without unnecessary delay to the Court by the defendant's counsel or the jailer.

§13-3-23. Consideration of Parole.

(1) The Court, upon receipt of a petition for parole, shall cause the clerk of the Court to prepare a report stating the term for which the defendant was sentenced, the offenses charged, the time served and may include a sworn statement from a Tribal jailer regarding the conduct of the defendant while incarcerated and any other information deemed relevant by the Court.

(2) Unless it appears that the defendant is not eligible for parole as a result of some reason other than his behavior while incarcerated, the judge shall schedule a parole hearing within 14 days and shall request a report from the Board for the Disposition of Offenders and/or the Adult Probation and Parole Department on the background and rehabilitative needs of the defendant.

(3) A hearing shall be held at which the defendant shall have the right to be represented by counsel and present evidence. The Court may, upon consideration of all relevant factors, grant parole to a defendant upon any or all of the conditions set forth in this Code for the granting of probation and for like periods as if probation were then imposed.

(4) The Court's decision to grant or refuse parole shall be reviewable only for abuse of discretion.

§13-3-24. Powers Over Parolee.

Once parole is granted, the defendant shall be subject to the same procedures and conditions as if he were originally placed on probation and the Court shall have the power to modify or revoke the probation under like rules and circumstances as provided in this Code for defendants on probation.

F. Enhanced Sentencing

§13-3-25. Criminal Gang Activity.

Upon a finding by the Court at sentencing that the defendant committed the charges offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, the penalty for any felony or misdemeanor, or any delinquent act or violation of law which would be a felony or misdemeanor if committed by an adult, may be

enhanced. Each of the findings required as a basis for such sentence shall be found by a preponderance of the evidence. The enhancement will be as follows:

(1) A Class C offense may be punished as if it were a Class B offense.

(2) A Class B offense may be punished as if it were a Class A offense.

(3) A Class A offense may be punished by doubling the penalties otherwise applicable to it up to a maximum of 3 years jail time and fine of \$15,000 per offense.

§ 13-3-26. Long Term Detention for Juveniles for Gang-Related Acts.

Any juvenile defendant found to have committed the charged offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang may be subject to long term detention in the detention facility determined by the sentencing court to be most appropriate for that juvenile detention.

IV. OFFENSES

A. Inchoate Offenses

§13-4-1. Attempt.

(1) A person is guilty of an attempt to commit an offense if, acting with the kind of culpability otherwise required for the commission of the offense, he engages in conduct constituting a substantial step towards commission of the offense.

(2) Conduct does not constitute a substantial step towards the commission of an offense unless it is strongly corroborative of the actor's intent to commit the offense.

(3) No defense to the offense of attempt shall arise:

(a) because the offense attempted was actually committed; or

(b) due to the factual or legal impossibility of consummating the intended offense if the offense could have been committed had the circumstances been as the actor believed them to be.

(4) Except as otherwise provided in this Code, attempt shall be:

(a) a Class A offense if the attempted offense was a Class A offense;

(b) a Class B offense if the attempted offense was a Class B offense;

(c) a Class C offense if the attempted offense was a Class C offense.

§13-4-2. Criminal Conspiracy.

(1) A person is guilty of criminal conspiracy when he, intending that conduct constituting a crime be performed, agrees with one or more persons to engage in or cause the performance of such conduct and any one of them commits an overt act in pursuance of the conspiracy, except that where the offense is a Class A offense the overt act is not required for the commission of conspiracy.

(2) Conspiracy to commit:

(a) a Class A offense is a Class A offense;

(b) a Class B offense is a Class B offense;

(c) a Class C' offense is a Class C offense.

§13-4-3. Solicitation.

(1) A person is guilty of solicitation when he, intending that another person commit an offense, entices, advises, incites, orders, or otherwise encourages such other person to commit an offense.

(2) Solicitation to commit:

(a) a Class A offense is a Class B offense;

(b) a Class B offense is a Class C offense;

(c) a Class C offense is not an offense.

B. Offenses Against the Person

§ 13-4-4. Provisions Applicable to Offenses Against the Person.

(1)Criminal Jurisdiction for Offenses Against the Person. In addition to the Tribe's non-domestic violence criminal jurisdiction, the powers of self-government of the Ute Indian Tribe include the inherent power to exercise special domestic violence criminal jurisdiction for domestic violence, dating violence, and violations of protection orders over all persons provided that the defendant

(A) Resides in Indian country of the Ute Indian Tribe;

(B) Is employed in the Indian country of the Ute Indian Tribe; or

(C) Is a spouse, intimate partner, or dating partner of

(i) a member of the Ute Indian Tribe; or

(ii) an Indian who resides in the Indian country of the Ute Indian Tribe.

(B) Exceptions.

(i)The Ute Indian Tribe may not exercise criminal jurisdiction over an alleged offense if neither the defendant nor the alleged victim is an Indian.

(2) Definitions Applicable to Offenses Against the Person.

(A) Dating Violence- The term `dating violence' means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(B) Domestic Violence- The term `domestic violence' means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the laws of an Ute Indian Tribe.

(C) Spouse or Intimate Partner- The term `spouse or intimate partner' means:

(i) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or

(ii) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; and

(iii) a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or

(iv) a person who is or has been in a social relationship of a romantic or intimate nature with the target of the stalking, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

(D) Substantial Bodily Injury - The term "substantial bodily injury" means bodily injury which involves—

(i) a temporary but substantial disfigurement; or

(ii) a temporary but substantial loss or impairment of the function of any bodily member, organ, or mental faculty; and

(E) Serious Bodily Injury - The term "serious bodily injury" means bodily injury which involves—

(i) a substantial risk of death;

(ii) extreme physical pain;

(iii) protracted and obvious disfigurement; or

(iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and

(F) Bodily Injury - The term "bodily injury" means—

(i) a cut, abrasion, bruise, burn, or disfigurement;

(ii) physical pain;

(iii) illness;

(iv) impairment of the function of a bodily member, organ, or mental faculty; or

(v) any other injury to the body, no matter how temporary.

(G) Victim. The term "victim" means a person specifically protected by a protection order that the defendant allegedly violated.

1. Assault and Related Offenses.

§13-4-5. Simple Assault.

(1) A person is guilty of simple assault if he:

(a) attempts to cause or purposely, knowingly, or recklessly causes bodily injury to another; or

(b) negligently causes bodily injury to another with a deadly weapon; or

(c) attempts by a show of force or violence to put another in fear of imminent serious bodily injury; or

(d) recklessly endangers another by an act or omission to act which threatens to cause serious bodily harm to another, whether or not such harm actually occurs.

(2) Simple Assault is a Class B offense unless committed in a fight or scuffle entered into by mutual consent, in which case, it is a Class C offense.

(3) Simple Assault of a spouse, intimate partner, or dating partner is a Class A offense

(4) Simple Assault of a spouse, intimate partner, or dating partner or in cases of domestic violence or dating violence is a Class A offense and shall be punished by doubling the jail time and fine of a Class A offense up to 3 years jail time and a fine of \$15,000 per offense.

§13-4-6. Aggravated Assault.

(1) A person is guilty of aggravated assault if he:

(a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or

(b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or

(c) intentionally or knowingly uses a deadly weapon to put another in fear of imminent serious bodily injury.

(d) assault as defined above committed against:

(i) A uniformed or properly identified tribal law enforcement officer while such officer is engaged in the performance of such officer's duties

(ii) police animal when that animal is involved in law enforcement investigation, apprehension, tracking, or search, or the animal is in the custody of or under the control of a law enforcement officer or agency.

(2) Aggravated Assault is a Class A offense.

(3) Aggravated Assault against a spouse, intimate partner, or dating partner or in cases of domestic violence or dating violence is a Class A offense and shall be punished by doubling the jail time and fine of a Class A offense up to 3 years jail time and a fine of \$15,000 per offense.

§13-4-7. Mayhem.

(1) A person is guilty of mayhem if he unlawfully and purposely or knowingly;

(a) deprives a human being of a member of his body or disables or renders it useless; or

(b) cuts out or disables the tongue, puts out an eye, or slits the nose, ear or lip of another.

(2) Mayhem is a Class A offense.

(3) Mayhem against a spouse, intimate partner, or dating partner or in cases of domestic violence or dating violence is a Class A offense and shall be punished by doubling the jail time and fine of a Class A offense up to 3 years jail time and a fine of \$15,000 per offense.

§13-4-8. Terroristic Threats.

(1) A person is guilty of terroristic threats if he threatens verbally or in writing to commit any offense involving violence with intent to terrorize another or place such other in fear of imminent serious bodily injury or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience.

(2) Terroristic threats is a Class B offense, unless serious public inconvenience or the evacuation of a building, place of assembly or facility of public transportation is intended by the actor or actually results, in which case it is a Class A offense.

(3) Terroristic threats against a spouse, intimate partner, or dating partner or in cases of domestic violence or dating violence is a Class A offense and shall be punished by doubling the jail time and fine of a Class A offense up to 3 years jail time and a fine of \$15,000 per offense.

2. Criminal Homicide and Related Offenses.

§13-4-9. Criminal Homicide.

(1) A person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently causes the death of another human being.

(2) Criminal homicide is a Class A offense, and if the offense is found to have been committed purposely or knowingly, no suspension of sentence, probation or parole shall be granted, and the maximum fine and incarceration shall be imposed.

(3) Criminal homicide against a spouse, intimate partner, or dating partner or in cases of domestic violence or dating violence is a Class A offense and shall be punished by doubling the jail time and fine of a Class A offense up to 3 years jail time and a fine of \$15,000 per offense.

§13-4-10. Vehicular Homicide.

(1) A person is guilty of vehicular homicide if, while under the influence of an alcoholic beverage, intoxicating liquor, a controlled substance, or any drug, to a degree which renders the person incapable of safely driving a vehicle, he causes the death of another by operating a motor vehicle in a reckless, negligent, or careless manner.

(2) The presumptions established in the Utah Code Annotated as adopted by reference into this Law and Order Code regarding blood alcohol content and the presumption of intoxication shall be applicable to this Section, and any chemical test administered on a defendant with his consent or after his arrest, whether with or against his consent, shall be admissible in accordance with the rules of evidence.

(3) For purpose of this Section, a motor vehicle is any self-propelled vehicle and includes, but is not limited to, any automobile, truck, van, motorcycle, train, engine, water craft, aircraft or snowmobile.

(4) Vehicular homicide is a Class A offense.

(5) Vehicular homicide against a spouse, intimate partner, or dating partner or in cases of domestic violence or dating violence is a Class A offense and shall be punished by doubling the jail time and fine of a Class A offense up to 3 years jail time and a fine of \$15,000 per offense.

3. Kidnapping and Related Offenses.

§13-4-11. Kidnapping.

(1) A person is guilty of kidnaping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, with any of the following purposes:

(a) to hold for ransom or reward, or as a shield or hostage; or

(b) to facilitate commission of any offense or flight thereafter; or

(c) to inflict bodily injury on or to terrorize the victim or another; or

(d) to interfere with the performance of any Tribal, governmental or political function.

(2) A removal, restraint, or confinement is unlawful within the meaning of this part if it is accomplished by force, threat or deception, or, in the case of a person under the age of 14 or incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

(3) Kidnapping is a Class A offense.

(4) Kidnapping against a spouse, intimate partner, or dating partner or in cases of domestic violence or dating violence is a Class A offense and shall be punished by doubling the jail time and fine of a Class A offense up to 3 years jail time and a fine of \$15,000 per offense.

§13-4-12. False Imprisonment.

(1) A person is guilty of false imprisonment if he knowingly restrains another unlawfully so as to interfere with his liberty.

(2) False imprisonment is a Class C offense unless the detention occurs under circumstances which expose the victim to a risk of serious bodily injury in which case it is a Class B offense.

(3) False imprisonment against a spouse, intimate partner, or dating partner or in cases of domestic violence or dating violence is a Class A offense and shall be punished by doubling the jail time and fine of a Class A offense up to 3 years jail time and a fine of \$15,000 per offense.

§13-4-13. Custodial Interference.

(1) A person, whether a parent or other person, is guilty of custodial interference if:

(a) without good cause, he takes, entices, conceals, or detains a child under the age of 16 from his parent, guardian or other lawful custodian:

i. knowing he has no legal right to do so; and

ii. with intent to hold the child for a period substantially longer than any visitation or custody period previously awarded by a court of competent jurisdiction; or

(b) having actual physical custody of a child under the age of 16 pursuant to a judicial award of a court of competent jurisdiction which has given another person visitation or custody rights, and without good cause, he detains or conceals the child with intent to deprive the other person of his lawful visitation or custody rights; or

(c) without good cause he takes, entices or detains an incompetent or other person who has been committed by authority of law to the custody of another person or institution from the other person or institution, knowing he has no legal right to do so.

(2) Custodial interference is a Class C offense.

§13-4-14. Criminal Coercion.

(1) A person is guilty of criminal coercion if; with purpose to restrict unlawfully another's freedom of action to his detriment, he threatens to:

(a) commit any criminal offense; or

(b) accuse anyone of a criminal offense; or

(c) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business reputation; or

(d) take or withhold action as an official, or cause an official to take or withhold action.

(2) It is an affirmative defense to prosecution based on this section, except for subsection (a) above, that the actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure, or proposed official action; for example, as by refraining from further misbehavior, making good a wrong done, refraining from taking any action or responsibility for which the actor believes the other disqualified.

(3) Criminal coercion is a Class C offense, unless the threat is to commit a Class A offense or the actor's purpose is to cause the accomplishment of a Class A or Class B offense by the other, in which case it is a Class B offense.

(4) Criminal coercion against a spouse, intimate partner, or dating partner or in cases of domestic violence or dating violence is a Class A offense and shall be punished by doubling the jail time and fine of a Class A offense up to 3 years jail time and a fine of \$15,000 per offense.

4. Sexual Offenses.

§13-4-15. Rape.

(1) A person who has sexual intercourse with a person other than the person's spouse is guilty of rape if:

(a) a person compels another person to submit by force or by the threat of imminent death, serious bodily injury, extreme pain, or kidnaping to be inflicted on him/her or anyone else; or

(b) a person compels another person to submit by any threat that would prevent resistance by a person of ordinary resolution; or

(c) a person has substantially impaired him/her power to appraise or control his/her conduct by administering or employing without his/her knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

(d) a person knows that another person suffers from a mental disease or defect which renders him/her incapable of appraising the nature of his/her conduct; or

(e) the alleged victim is unconscious or he/she knows that the alleged victim is unaware that a sexual act is being committed upon the alleged victim or that the alleged victim submits because the alleged victim falsely supposes that the alleged offender is the alleged victim's spouse; or

(f) the alleged victim is less than 14 years old.

(2) Sexual intercourse includes intercourse per os or per anum, with some penetration, however slight; emission is not required.

(3) Rape is a Class A offense.

(4) Rape against a spouse, intimate partner, or dating partner or in cases of domestic violence or dating violence is a Class A offense and shall be punished by doubling the jail time and fine of a Class A offense up to 3 years jail time and a fine of \$15,000 per offense.

§13-4-16. Unlawful Sexual Intercourse.

(1) A person is guilty of unlawful sexual intercourse if he/she has sexual intercourse with another person, not its spouse, who is under 16 years of age, regardless of consent.

(2) Unlawful sexual intercourse is a Class A offense except that when the alleged offender at the time of intercourse was no more than three years older than the alleged victim, and the alleged victim consented, it is a Class C offense.

Evidence of the defendant's age in relation to the victim shall be raised by the defendant and need not be affirmatively proven by the prosecution.

(3) Unlawful sexual intercourse against a spouse, intimate partner, or dating partner or in cases of domestic violence or dating violence is a Class A offense and shall be punished by doubling the jail time and fine of a Class A offense up to 3 years jail time and a fine of \$15,000 per offense.

§13-4-17. Deviate Sexual Intercourse.

(1) A person is guilty of deviate sexual intercourse if he engages in deviate sexual intercourse, or causes another to engage in deviate sexual intercourse and if:

(a) the alleged offender compels the other person to participate by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or

(b) the alleged offender compels the other person to participate by any threat that would prevent resistance by a person of ordinary resolution; or

(c) the alleged offender has substantially impaired the other person's power to appraise or control his conduct by administering or employing without the knowledge of the other person drugs, intoxicants or other means for the purpose of preventing resistance; or

(d) the alleged offender knows that the other person suffers from a mental disease or defect which renders the other person incapable of appraising the nature of the alleged offender's conduct or the alleged offender knows that the other person is unconscious or submits because the other person is unaware that a sexual act is being committed upon him/her; or

(e) the other person is less than 16 years old.

(2) Deviate sexual intercourse means any form of sexual intercourse with an animal.

(3) Deviate sexual intercourse is a Class A offense.

(4) Deviate sexual intercourse against a spouse, intimate partner, or dating partner or in cases of domestic violence or dating violence is a Class A offense and shall be punished by doubling the jail time and fine of a Class A offense up to 3 years jail time and a fine of \$15,000 per offense.

§13-4-18. Sexual Assault.

(1) A person is guilty of sexual assault if he/she subjects another not his/her spouse, intimate partner or dating partner to any sexual contact and:

(a) he/she knows that the conduct is offensive to the other person; or

(b) he/she knows that the other person suffers from a mental disease or defect which renders her/him incapable of appraising the nature of his conduct; or

(c) he/she knows that the other person is unaware that a sexual act is being committed; or

(d) he/she has substantially impaired the other person's power to appraise or control his/her conduct by administering or employing without the other's knowledge drugs, intoxicants, or other means for the purpose of preventing resistance; or

(e) the other person is less than 14 years old; or

(f) the other person is less than 16 years old and the actor is at least four years older than the other person; or

(g) the other person is less than 21 years old and the actor is his/her parent, guardian or otherwise responsible for general supervision of his welfare; or

(h) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him/her.

(2) Sexual contact is any touching of the sexual or other intimate parts of the person of another or otherwise taking indecent liberties with another for the purpose of arousing or gratifying sexual desire of either party.

(3) Sexual assault is a Class B offense.

(4) Sexual Assault against a spouse, intimate partner, or dating partner or in cases of domestic violence or dating violence is a Class A offense and shall be punished by doubling the jail time and fine of a Class A offense up to 3 years jail time and a fine of \$15,000 per offense.

§13-4-19. Indecent Exposure.

(1) A person is guilty of indecent exposure if, for the purpose of arousing or gratifying sexual desire of himself or of any other person other than his spouse, he exposes his genitals.

(2) Indecent exposure to a person over the age of 18 is a Class C offense.

(3) Indecent exposure to a person under the age of 18 shall be a Class B offense.

§13-4-20. Provisions Applicable to Sexual Offenses.

(1) No prosecution may be instituted or maintained under these provisions on sexual offenses unless the alleged offense was brought to the attention of public authority within three months of its occurrence, or, where the alleged victim is less than 18 years old or otherwise incompetent to make complaint, within three months after a parent or guardian or other competent person specifically interested in the victim learns of the offense.

(2) Whenever an element of an offense depends on the age of a child being below the age of 14, it is no defense that the actor did not know the child's age or reasonably believed the child to be older than 14. Whenever an element of an offense depends on the age of a child being below a critical age other than 14, it is a defense for the actor to prove by a preponderance of the evidence that he reasonably believed the child to be above the critical age.

(3) Whenever appropriate in any prosecution before a jury regarding a sexual offense in this Code, the jury shall be instructed to evaluate the testimony of a victim or complaining witness with special care in view of the emotional involvement of the witness and the difficulty of determining the truth with respect to alleged sexual activities carried out in private, when such are not otherwise corroborated.

C. Offenses Against Property.

1. Property Destruction.

§13-4-21. Arson.

(1) A person is guilty of arson if he starts a fire or causes an explosion with the purpose of:

(a) destroying a building or occupied structure of another; or

(b) destroying or damaging any property, whether his own or another's, to collect insurance for such loss.

(2) Definitions:

(a) The term "occupied structure" includes a ship, trailer, sleeping car, airplane or vehicle, structure or place adapted for overnight accommodation of persons or for carrying on business therein, whether or not a person is actually present.

(b) Property is that of another, for the purposes of this section, if anyone other than the actor has a possessory or proprietary interest therein. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an occupied structure of another.

(3) Arson is a Class A offense.

§13-4-22. Reckless Burning.

(1) A person is guilty of reckless burning if he:

(a) recklessly starts a fire or causes an explosion which endangers human life; or

(b) damages property of another by reckless use of fire or reckless causing of an explosion; or

(c) having started a fire, whether recklessly or not, and knowing that it is spreading and will endanger the life or property of another, either fails to take reasonable measures to put out or control the fire or fails to give a prompt fire alarm.

(2) Reckless burning is a Class B offense.

§13-4-23. Causing a Catastrophe.

(1) A person is guilty of causing a catastrophe if he, by explosion, fire, flood, avalanche, collapse of a building, release of a poison gas, radioactive material, or other harmful or destructive force or substance, or by any other means, causes actual or potentially wide-spread injury to persons or property.

(2) Causing a catastrophe is a Class A offense if done purposely or knowingly and a Class B offense if done recklessly.

§13-4-24. Criminal Mischief.

(1) A person is guilty of criminal mischief if:

(a) under circumstances not amounting to arson, he damages or destroys property with the intention of defrauding an insurer; or

(b) he intentionally and unlawfully tampers with the property of another and thereby

i) recklessly endangers human life; or

ii) recklessly causes or threatens a substantial interruption or impairment of any public utility service; or

(c) he intentionally damages, defaces, or destroys the livestock, domestic animal or other property of another; or

(d) he purposely or recklessly shoots or propels a missile or other object against a motor vehicle, bus, airplane, boat, locomotive, or train, whether moving or standing.

(2) Criminal mischief is a Class B offense unless the actor's conduct causes or was intended to cause pecuniary loss of less than \$100.00 in which case it is a Class C offense.

2. Burglary and Related Offenses.

§13-4-25. Burglary.

(1) A person is guilty of burglary if he enters or remains unlawfully in a building or occupied structure, or separately secured or occupied portion thereof, with purpose to commit an offense therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. It is an affirmative defense to a prosecution for burglary that the building or structure was abandoned.

(2) Definitions:

(a) An "occupied structure" is any structure, vehicle, or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.

(b) "Enter" means an intrusion of any part of the body, or intrusion of any physical object under control of the actor.

(3) Burglary is a Class A offense.

(4) A person may not be convicted of both burglary and the offense which it was his purpose to commit after the burglarious entry or for an attempt to commit that offense if such offense was a Class C offense; he may be convicted of both or all of such other offenses that are Class A or B offenses.

§13-4-26. Burglary of a Vehicle.

(1) A person is guilty of burglary of a vehicle if he unlawfully enters any vehicle with intent to commit an offense therein.

(2) Burglary of a vehicle is a Class A offense.

§13-4-27. Aggravated Trespass.

(1) A person is guilty of aggravated trespass if he enters or remains unlawfully on property which he is not otherwise privileged to enter or remain and:

(a) accomplishes such entry by an act of force or violence or the use of a key or similar device which provides entry and which device the actor is not authorized or privileged to use for such purpose; or

(b) intends to cause or causes annoyance or injury to any person thereon or damage to any property thereon; or

(c) intends to commit or commits an offense thereon; or

(d) is reckless as to whether his presence will cause fear for the safety of another.

(2) Aggravated trespass is a Class B offense.

§13-4-28. Simple Trespass.

(1) A person is guilty of simple trespass if, knowing his entry or presence is unlawful, he enters or remains on property as to which notice against entry is given by:

(a) personal communication to the actor by the owner or someone with authority to act for the owner; or

(b) fencing or other enclosure obviously designed to exclude intruders; or

(c) posting of signs reasonably likely to come to the attention of intruders.

(2) It is an affirmative defense to simple trespass that:

(a) the property was open to the public when the actor entered or remained and he had not been informed that he should leave or not enter; or

(b) the actor's conducts did not substantially interfere with the owner's use of the property and the actor left the property when asked to do so.

(3) Simple trespass is a Class C offense.

3. Robbery.

§13-4-29. Robbery.

(1) A person is guilty of robbery if, in the course of committing a theft, he:

(a) inflicts serious bodily injury upon another; or

(b) threatens another with, or purposely puts him in fear of immediate serious bodily injury; or

(c) commits or threatens to commit a Class A or Class B offense.

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

(3) Robbery is a Class A offense.

4. Theft and Related Offenses.

§13-4-30. Consolidation of Theft Offenses; General Provisions.

(1) Conduct denominated in this part of the Code constitutes a single offense embracing the separate offenses heretofore known as larceny, embezzlement, false pretense, extortion, blackmail, fraudulent conversion, receiving stolen property, and the like. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this part of the Code, notwithstanding a different manner is charged in the complaint, subject only to the power of the Court to ensure a fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

(2) It is an affirmative defense to prosecution for theft that the actor:

(a) acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or

(b) obtained or exercised control over the property or service honestly and reasonably believing that the owner if present would have consented.

(3) It is no defense that:

(a) the theft was from the actor's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together; or

(b) the actor has an interest in the property or service stolen if another person also has an interest that the actor is not entitled to infringe upon.

(4) Possession of property recently stolen, when no satisfactory explanation of such possession is made, shall be deemed prima facie evidence that the person in possession stole the property.

(5) All unbranded cattle over six (6) months old shall be presumed to be the property of the Ute Indian Tribe and its livestock enterprise, and the burden of proving otherwise shall be upon the person found in possession of such unbranded cattle on the Reservation.

(6) The Tribal Police as well as designated officials of the Tribal livestock enterprise and the Bureau of Indian Affairs shall have authority to stop any vehicle transporting livestock within the exterior boundaries of the Reservation to determine the ownership of such livestock and check for disease or infection.

§13-4-31. Grading of Theft Offenses.

(1) Theft of property or service as provided in this part shall be punishable as follows:

(a) if the value of the property or services involved is more than \$500.00, the offense shall be a Class A offense;

(b) if the value of the property or services involved is \$100.00 or more but less than \$500.00, the offense shall be a Class B offense; or

(c) if the value of the property or services involved is less than \$100.00, the offense shall be a Class C offense.

(2) If no evidence as to the value of the property or services involved is presented and the value of such is not obvious Without presentation of such evidence, and if it otherwise is proven that a theft offense has been committed, the offense shall be a Class C offense.

§13-4-32. Theft of Property.

A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof.

§13-4-33. Theft by Deception.

(1) A person is guilty of theft if he obtains or exercises unauthorized control over property of another by deception and with a purpose to deprive him thereof.

(2) A person deceives if he purposely:

(a) 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 a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or

(b) prevents another from acquiring information which would affect his judgment of a transaction; or

(c) 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

(d) fails to disclose a lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid or is not a matter of official record.

(3) The term "deceive" does not, however, include matters having no pecuniary significance, or mere puffing by statements unlikely to deceive ordinary persons in the group addressed.

§13-4-34. Theft by Extortion.

(1) A person is guilty of theft if he obtains or exercises control over the property of another by extortion and with a purpose to deprive him thereof.

(2) Extortion occurs when a person threatens to:

(a) inflict bodily injury on anyone or commit any other criminal offense; or

(b) accuse anyone of a criminal offense; or

(c) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business reputation; or

(d) take or withhold action as an official, or cause an official to take or withhold action; or

(e) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or

(f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(g) inflict any other harm which would not benefit the actor but which would substantially harm any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.

(3) It is an affirmative defense to prosecution based on paragraphs b), c) or d) of subsection (2) above that the property obtained by threat of action, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services.

§13-4-35. Theft of Property Lost, Mislaid or Delivered by Mistake.

A person is guilty of theft if he comes into control or possession of property of another that he knows or reasonably suspects has been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, and with purpose to deprive the owner thereof, fails to take reasonable measures to restore the property to a person entitled to have it.

§13-4-36. Receiving Stolen Property.

(1) A person is guilty of theft if he receives, retains or disposes of the property of another knowing that it has been stolen, or believing that it has probably been stolen, or who conceals, sells, withholds or aids in concealing, selling, or withholding any such property from the owner, knowing the property to be stolen, with a purpose to deprive the owner thereof.

(2) The requisite knowledge or belief is presumed in the case of a person who:

(a) is found in possession or control of other property stolen on a separate occasion; or

(b) has received stolen property in another transaction within the year preceding the transaction charged; or

(c) being a dealer in property of the sort received, acquires it for a consideration which he knows or should know is far below its reasonable value.

(3) As used in this section, "receives" means acquiring possession, control or title, or lending on the security of the property; "dealer" means a person in the business of buying or selling goods.

§13-4-37. Theft of Services.

(1) A person is guilty of theft if:

(a) he obtains services which he knows are available only for compensation by deception, threat, force, or any other means designed to avoid the due payment therefor; or

(b) having control over the disposition of services of others, to which he is not entitled, he diverts such services to his own benefit or to the benefit of another not entitled thereto.

(2) Where compensation for service is ordinarily paid immediately upon the rendering of such service, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to the intent to pay.

(3) "Services" includes, but is not limited to, labor, professional service, telephone or other public service, accommodation in hotels, restaurants or elsewhere, admissions to a place for which a charge for admission is made, the use of vehicles or other moveable or real property.

§13-4-38. Theft by Failure to Make Required Disposition of Funds Received.

(1) A person is guilty of theft if he obtains property from anyone, or personal services from an employee, upon agreement, or subject to a known legal obligation to make a specified payment or other disposition to a third person, whether from the property or its proceeds or from his own property in an equivalent amount, and if he deals with the property as his own and fails to make the required payment or disposition.

(2) It is no defense that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition.

(3) An officer or employee of the Tribe, government, or of a financial institution is presumed:

(a) to know of any legal obligation relevant to his liability under this section; and

(b) to have dealt with the property as his own if he fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

§13-4-39. Unauthorized Use of a Vehicle.

(1) A person is guilty of unauthorized use of a vehicle if he operates another's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without consent of the owner.

(2) It is an affirmative defense to prosecution of this offense that the actor reasonably believed that the owner would have consented to the operation had he known of it.

(3) Unauthorized use of a vehicle is a Class C offense.

§13-4-40. Definitions Applicable to This Part.

(1) "Property" means anything of value, including 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, commodities of a public utility such as water, gas or electricity, trade or business secrets which the owner thereof intends to be available only to persons selected by him, or any other right, object, labor or service valuable to the owner thereof.

(2) "Property of another" includes property in which any person, company, group or organization other than the actor has an interest which the actor is not privileged to infringe, 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 the 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.

(3) "Obtain" means, in relation to property, to bring about a transfer or purported transfer of possession or of some other legally recognized interest in property, whether to the obtainer or another; in relation to labor or services, to secure performance thereof; and in relation to a trade or business secret, to make any facsimile, replica, photograph or other reproduction thereof.

(4) "Purpose to deprive" means to have the conscious object:

(a) to withhold property permanently or for so extended a period or to use under such circumstances that a substantial portion of its economic value, or the use and benefit thereof, would be lost; or

(b) to restore the property only upon payment of a reward or other compensation; or

(c) to dispose of the property under circumstances that make it unlikely that the owner will recover it or recover it unharmed.

5. Forgery and Fraudulent Practices.

§13-4-41. Forgery.

(1) A person is guilty of forgery if, with purposes to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, he:

(a) alters any writing of another without his authority; or

(b) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or

(c) utters or attempts to circulate as genuine any writing which he knows to be forged in the manner specified in this section.

(2) "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, money, and other symbols of value, right, privilege, or identification.

(3) Forgery is a Class A offense if the writing purports to be money, securities, postage or revenue stamps, or other instruments issued by the Tribe or the government, a will, deed, contract, release, commercial instrument or other document evidencing, creating, transferring, altering, terminating, or otherwise affecting legal relations. Otherwise, forgery is a Class B offense.

§13-4-42. Criminal Simulation

(1) A person is guilty of criminal simulation if, with purpose to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters or utters or attempts to circulate or sell as genuine any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess.

(2) Criminal simulation is a Class B offense.

§13-4-43. Fraudulent Handling of Recordable Instruments.

(1) A person is guilty of fraudulent handling of recordable instruments if, with purpose to deceive or injure anyone, he destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording or knowingly records a false or forged instrument.

(2) Fraudulent handling of recordable instruments is a Class B offense.

§13-4-44. Tampering With Records.

(1) A person is guilty of tampering with records if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrong doing.

(2) Tampering with records is a Class B offense.

§13-4-45. Bad Checks.

(1) A person is guilty of bad checks if he issues or passes a check or similar sight order for the payment of money, for the purpose of obtaining any money, property, or other thing of value or paying for any services, rent, wages or salary, knowing or believing that it will not be honored by the drawee.

(2) For the purposes of this Section as well as in any prosecution for theft committed by means of a bad check, an issuer is presumed to know that the check or order (other than a post-dated check or order) would not be paid if:

(a) the issuer had no account with the drawee at the time the check or order was issued; or

(b) payment was refused by the drawee for lack of funds, upon presentation for payment within 30 days of issue, and the issuer thereafter failed or was intentionally unavailable to make good within 10 days after such refusal and receipt of notice thereof;

(3) Bad checks is a Class A offense if the check or a series of checks issued over a period not exceeding six months exceeds \$500.00; otherwise bad checks is a Class B offense.

§13-4-46. Fraudulent Use of a Credit Card.

(1) A person is guilty of fraudulent use of a credit card if he uses a credit card for the purpose of obtaining property or services with knowledge that:

(a) the card is stolen; or

(b) the card has been revoked or cancelled; or

(c) for any other reason his use of the credit card is unauthorized by either the issuer or the person to whom the card has been issued.

(2) "Credit card" means a writing purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(3) Fraudulent use of a credit card is a Class A offense if the value of the property or services secured or sought to be secured by means of the credit card exceeds \$500.00; otherwise, fraudulent use of a credit card is a Class B offense.

§13-4-47. Deceptive Business Practices.

(1) A person is guilty of deceptive business practices if, in the course of business, he:

(a) uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or

(b) sells, offers or exposes for sale, or delivers less than the represented quality or quantity of any commodity or service; or

(c) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure; or

(d) sells, offers or exposes for sale adulterated or mislabeled commodities;

i) "adulterated" means varying from the standard of composition or quality prescribed by law or commercial usage.

ii) "mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or commercial usage; or

(e) makes a false or misleading statement in any advertisement addressed to the public or a substantial segment thereof for the purpose of promoting the purchase or sale of property or services; or

(f) makes a false or misleading statement for the purpose of obtaining property or credit; or

(g) makes a false or misleading written statement for the purpose of promoting the sale of securities, or omits information required by law to be disclosed in written documents relating to securities.

(2) It is an affirmative defense to prosecution under this Section if the defendant proves by a preponderance of the evidence that his conduct was not knowingly or recklessly deceptive.

(3) Deceptive business practices is a Class B offense.

§13-4-48. Commercial Bribery.

(1) A person is guilty of commercial bribery if:

(a) he solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as:

i) agent or employee of another;

ii) trustee, guardian, or other fiduciary;

iii) lawyer, physician, accountant, appraiser, or other professional advisor or informant;

iv) officer, director, partner, manager, or other participant in the direction of affairs of an incorporated or unincorporated association; or

v) arbitrator or other purportedly disinterested adjudicator or referee; or

(b) being one who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services, he solicits, accepts or agrees to accept any benefit to influence his selection, appraisal or criticism; or

(c) he confers or offers or agrees to confer any benefit the acceptance of which would be criminal under this Section.

(2) Commercial bribery is a Class B offense.

§13-4-49. Rigging a Contest.

(1) A person is guilty of rigging a contest if:

(a) with a purpose to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages purporting to govern it, he:

i) confers or offers or agrees to confer any benefit upon, or threatens any injury to a participant, official or other person associated with the contest or exhibition; or

ii) tampers with any person, animal, or thing; or

(b) he knowingly solicits, accepts or agrees to accept any benefit the giving of which would be criminal under this Section; or

(c) he knowingly engages in, sponsors, produces, judges, or otherwise participates in a publicly exhibited contest knowing that the contest is not being conducted in compliance with the rules and usages purporting to govern it, by reason of conduct which would be criminal under this Section.

(2) Rigging a contest is a Class B offense.

§13-4-50. Defrauding Creditors.

(1) A person is guilty of defrauding creditors if:

(a) he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with purpose to hinder enforcement of that interest; or

(b) knowing that proceedings have been or are about to be instituted for the appointment of a receiver or other person entitled to administer property for the benefit of creditors; he:

i) destroys, removes, encumbers, transfers, or otherwise deals with any property with purpose to defeat or obstruct the operation of any law relating to administration of property for the benefit of creditors; or

ii) knowingly falsifies any writing or record relating to the property; or

iii) knowingly misrepresents or refuses to disclose to a person entitled to administer property for the benefit of creditors, the existence, amount or location of the property, or any other information which the actor could be legally required to furnish in relation to such administration.

(2) Defrauding creditors is a Class B offense.

§13-4-51. Unlawful Dealing With Property By a Fiduciary.

(1) A person is guilty of unlawful dealing with property by a fiduciary if he deals with the property that has been entrusted to him as a fiduciary, or property of the Tribe or government or of a financial institution, in a manner which he knows is a violation of his duty and which involves a substantial risk of loss to the owner or to a person for whose benefit the property was entrusted.

(2) As used in this Section, "fiduciary" includes a trustee, guardian, executor, administrator, receiver or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

(3) Unlawful dealing with property by a fiduciary is a Class B offense.

§13-4-52. Securing Execution of Documents by Deception.

(1) A person is guilty of securing execution of documents by deception if, by deception, he causes another to execute any instrument affecting or likely to affect the pecuniary interest of any person.

(2) Securing execution of documents by deception is a Class B offense.

§13-4-53. Making a False Credit Report.

(1) A person is guilty of making a false credit report if he knowingly makes a materially false or misleading statement to obtain property or credit for himself or another or to keep some other person from obtaining credit.

(2) Making a false credit report is a Class B offense.

§13-4-54. Criminal Usury.

(1) A person is guilty of criminal usury when he knowingly engages in or directly or indirectly provides financing for the business of making loans or purchases at a rate of interest or consideration therefore higher than the following:

(a) if the amount to which the interest applies is less than \$100.00 or the period of the loan or financing is less than one year, the rate of interest shall not exceed a 24 percent per annum simple interest rate.

(b) If the amount to which the interest applies is greater than \$100.00 or the period of the loan, or financing is greater than one year, the rate of interest shall not exceed an 18 percent per annum simple interest rate.

(2) In computing the interest rate, the following will be considered to be part of the interest charged: all charges payable directly or indirectly by the person receiving the credit as an incident to the extension of credit, including any of the following types of charges: time price differential, service, carrying or other charge, however denominated, premium or other charge for any guarantee of insurance protecting the seller against the buyer's default or other credit loss, charges incurred for investigating the collateral or credit of the borrower, and commissions or fees charged for obtaining credit.

(3) Criminal usury is a Class B offense.

D. Offenses Against the Family.

1. Marital Violations.

§13-4-55. Bigamy.

(1) A person is guilty of bigamy if, knowing that he has a husband or wife or knowing the other person has a husband or wife, he purports to marry another person or cohabits with another person.

(2) It shall be a defense to bigamy if the defendant proves by a preponderance of the evidence that he reasonably believed that he and the other person were eligible to remarry.

(3) Bigamy is a Class B offense.

§13-4-56. Incest.

(1) A person is guilty of incest if he knowingly marries or cohabits or has sexual intercourse or sexual contact with a person he knows to be an ancestor or descendant, brother, sister, aunt, uncle, nephew, niece, or first cousin, any of which are of the whole or half blood, without regard to legitimacy, adoption or step-parent/step-child relationship, while such relationship exists.

(2) Incest is a Class A offense.

§13-4-57. Adultery.

(1) A married person is guilty of adultery if he voluntarily has sexual intercourse with a person other than his spouse.

(2) Adultery is a Class B offense.

§13-4-58. Fornication.

(1) An unmarried person is guilty of fornication if he voluntarily has sexual intercourse with another.

(2) Fornication is a Class C offense.

2. Nonsupport and Related Offenses.

§13-4-59. Criminal Nonsupport.

(1) A person is guilty of criminal nonsupport if, without just cause, he fails to provide for the support of his spouse, child under 18, or other dependent when such persons or any of them are in needy circumstances.

(2) "Child" includes a child born out of wedlock whose paternity has been admitted by the actor or been established in a civil suit.

(3) In a prosecution under this section, it is no defense that the person to be supported received necessary support from a source other than the defendant.

(4) Criminal nonsupport is a Class B offense.

§13-4-60. Endangering the Welfare of a Child.

(1) A person is guilty of endangering the welfare of a child if he is a parent, guardian, or other person supervising the welfare of a child under 18 and he knowingly endangers the child's welfare by violating a duty of care, protection or support or by intentionally leaving or abandoning a child without care or by otherwise neglecting to care for a child in any manner which threatens serious harm to the physical, emotional or mental well being of the child.

(2) Endangering the welfare of a child is a Class B offense.

3. Abortion.

§13-4-61. Abortion.

(1) A person is guilty of abortion if he purposely and unjustifiably terminates the pregnancy of another otherwise than by a live birth.

(2) A licensed physician is justified in terminating a pregnancy if he believes there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother or that the child would be born with grave physical or mental defect, or that the pregnancy resulted from rape or incest. A justifiable abortion shall be performed only in a licensed hospital except in case of emergency when hospital facilities are not available.

(3) No abortion, otherwise justifiable, shall be performed unless two physicians, one of whom may be the person performing the abortion, shall have certified in writing the circumstances which they believe justify the abortion and, when appropriate, all tests and supporting evidence underlying such circumstances. Such certificate shall be submitted before the abortion to the hospital where it is to be performed, and, in case of abortion following rape or incest, to the police. Failure to comply with these requirements will give rise to a presumption that the abortion was unjustified.

(4) A pregnant woman is guilty of abortion if she purposely terminates her own pregnancy otherwise than by a live birth, or if she uses instruments, drugs or violence upon herself for that purpose.

(5) Except In circumstances otherwise justified, a person who induces or knowingly aids a woman to use instruments, drugs, or violence upon herself for the purpose of terminating her pregnancy otherwise than by a live birth is guilty of abortion.

(6) A person is guilty of abortion if, representing that it is his purpose to perform an abortion, he does an act adapted to cause abortion in a pregnant woman although the woman is, in fact, not pregnant, or the actor does not believe she is, or no termination of pregnancy results therefrom.

(7) Abortion is a Class A offense.

§13-4-62. Failure to Send Children to School.

(1) A person is guilty of failure to send children to school if, being the parent, guardian or other person having a child under 18 in his custody and cares he, without good cause, neglects or refuses to send such child to school.

(2) Failure to send children to school is a Class C offense.

E. Offenses Against the Administration of Government.

1. Bribery and Corrupt Influence.

§13-4-63. Bribery in Official Matters.

(1) A person is guilty of bribery in official matters if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:

(a) any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a Tribal or governmental officer or employee, or as an official of a party or faction or as a voter; or

(b) any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a known duty as a Tribal or governmental officer or employee or party official.

(2) It is not defense to prosecution under this Section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, lacked jurisdiction, or for any other reason.

(3) Bribery in official matters is a Class B offense.

§13-4-64. Improper Influence in Official Matters.

(1) A person is guilty of improper influence in official matters if he:

(a) threatens unlawful harm to any person with purpose to influence another's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official, or voter; or

(b) threatens harm to any public servant or relative of a public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(c) threatens harm to any public servant or party official or relative of either with purpose to influence him to violate his duty; or

(d) privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, en-treaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law.

(2) It is no defense to prosecution under this Section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

(3) Improper influence in official matters is a Class B offense.

§13-4-65. Compensation for Past Official Behavior.

(1) A person is guilty of compensation for past official behavior if:

(a) he solicits, accepts or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty; or

(b) he offers, confers or agrees to confer compensation acceptance of which is prohibited by this Section.

(2) Compensation for past official behavior is a Class B offense.

§13-4-66. Retaliation for Past Official Action.

(1) A person is guilty of retaliation for past official action if he harms any person by any unlawful act in retaliation for anything lawfully done by another person in his capacity as a public servant.

(2) Retaliation for past official action is a Class B offense.

§13-4-67. Improper Gifts to Public Servants.

(1) A person is guilty of improper gifts to public servants if:

(a) being a public servant in any department or agency exercising regulatory functions, or conducting inspections or investigations, or carrying on civil or criminal litigation on behalf of the Tribe or government, or having custody of prisoners, he shall solicit, accept or agree to accept any valuable benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated; or

(b) being a public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other valuable transactions of the Tribe or government, he shall solicit, accept or agree to accept any valuable benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transactions; or

(c) being a public servant having judicial, legislative, or administrative authority, or being a public servant employed by or in a court or other tribunal having such authority, or being involved in the enforcement of such a tribunal's decisions, he shall solicit, accept, or agree to accept any valuable benefit from a person known to be interested in or likely to become interested in any matter before such public servant or a tribunal with which he is associated; or

(d) he knowingly confers or offers or agrees to confer any benefit prohibited by this Section.

(2) This Section shall not apply to:

(a) fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives lawful consideration or to which he is otherwise entitled; or

(b) gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the receiver; or

(c) trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(3) Improper gifts to public servants is a Class B offense.

2. Abuse of Office.

§13-4-68. Official Misconduct.

(1) A person is guilty of official misconduct if:

(a) being a public servant, and with intent to benefit himself or another or harm another, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a nondiscretionary duty imposed on him by law or clearly inherent in the nature of his office; or

(b) being a public servant and knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant, which information has not been made public, he:

i) acquires or divests himself of a valuable interest in any property, transaction, or enterprise which may be affected by such action or information; or

ii) speculates or wagers on the basis of such action or information; or knowingly aid another to do any of the foregoing.

(2) Official misconduct is a Class B offense.

§13-4-69. Unofficial Misconduct.

(1) A person is guilty of unofficial misconduct if:

(a) he exercises or attempts to exercise any of the functions of a public office when:

i) he has not taken and filed the required oath of office; or

ii) he has failed to execute and file the required bond; or

iii) he has not been elected or appointed to office; or

iv) he exercises any of the functions of his office after his term has expired and his successor has been elected or appointed and has qualified, or after his office has been legally removed; or

(b) he knowingly withholds or retains from his successor in office or other person entitled to the official seal or any records, papers, documents or other writings appertaining or belonging to his office or mutilates or destroys or takes away the same.

(2) Unofficial misconduct is a Class B offense.

§13-4-70. Official Oppression.

(1) A person is guilty of official oppression if, when acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity, and knowing that his conduct is illegal, he:

(a) subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or

(b) denies or impedes another in the exercise or enjoyment of any right, power, or immunity.

(2) Official oppression is a Class B offense.

§13-4-71. Special Influence.

(1) A person is guilty of special influence if:

(a) he solicits, receives or agrees to receive any pecuniary benefit as consideration for exerting special influence upon a public servant, or procuring another to do so; or

(b) he offers, confers or agrees to confer any pecuniary benefit receipt of which is prohibited by this Section.

(2) Special influence is a Class B offense.

§13-4-72. Misusing Public Money.

(1) A person is guilty of misusing public money if, being a public servant or other person charged with the receipt, safekeeping, transfer or disbursement of public monies, he:

(a) without lawful authority appropriates the money or any portion of it to his own use or the use of another; or

(b) loans the money or any portion thereof without lawful authority; or

(c) fails to keep the money in his possession until lawfully disbursed or paid out; or

(d) deposits the money in a bank or with a person not lawfully authorized to receive such; or

(e) knowingly keeps any false account, or makes a false entry or erasure in any account of or relating to the money; or

(f) fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or

(g) knowingly refuses or omits to pay over on lawful demand by competent authority any public monies in his hands; or

(h) knowingly omits to transfer money when transfer is required by proper authority; or

(i) makes a profit for himself or another not lawfully entitled to such, or in an unlawful manner, out of public moneys; or

(j) fails to pay over to the proper account or authority any fines, forfeitures, or fees received by him; or

(k) otherwise handles public money in a manner not authorized by law for his own benefit or the benefit of another; or

(l) handles public money in a reckless manner as a result of which a risk of loss of such money is significant.

(2) "Public money" includes all money, bonds, and evidences of indebtedness or their equivalent, belonging to, or received or held by the Tribe or any other government, or any account or money held by the Tribe or government for any individual or group.

(3) Misusing public money is a Class A offense and disqualification to hold public office may be imposed upon proof by a preponderance of the evidence that the actor personally profited in any way by his misuse of public money as defined herein.

3. Falsification in Official Matters.

§13-4-73. Perjury.

(1) A person is guilty of perjury if, in any official proceeding, he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true.

(2) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law to be decided by the Court.

(3) It is no defense to prosecution under this Section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made on oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(4) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(5) Where a defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single complaint alleging in the alternative that one or the other was false and not believed by the defendant. In such case, it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(6) No person shall be convicted of an offense under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

(7) Perjury is a Class A offense.

§13-4-74. False Swearing.

(1) A person is guilty of false swearing if he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, if:

(a) the falsification occurs in an official proceeding; or

(b) the falsification is intended to mislead a public servant in performing his official function; or

(c) the statement is one which is required by law to be sworn or affirmed before a notary public or other person authorized to administer oaths.

(2) Subsections (3) to (6) of the Perjury Section apply to this Section.

(3) False swearing is a Class B offense.

§13-4-75. Unsworn Falsification.

(1) A person is guilty of unsworn falsification if, with a purpose to mislead a public servant in performing his official function, he:

(a) makes any written false statement which he does not believe to be true; or

(b) purposely creates a false impression in a written application for any benefit by omitting information necessary to prevent statements therein from being misleading; or

(c) submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or

(d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

(2) A person is guilty of unsworn falsification if he makes a written false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

(3) Subsections (3) to (6) of the Perjury Section apply to this Section.

(4) Unsworn falsification is a Class B offense.

§13-4-76. False Alarms.

(1) A person is guilty of false alarms if he knowingly:

(a) causes a false fire alarm or alarm of other emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property; or

(b) gives false information to any law enforcement officer with purpose to implicate another in an offense; or

(c) reports to law enforcement authorities an offense or other incident within their concern knowing or believing that it did not occur; or

(d) pretends to furnish law enforcement authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident; or

(e) gives a false name or address to a law enforcement officer in the lawful discharge of his official duties.

(2) False alarms is a Class C offense.

§13-4-77. Tampering with Witnesses.

(1) A person is guilty of tampering with witnesses if:

(a) believing that an official proceeding or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a person to:

i) testify or inform falsely; or

ii) withhold any testimony information, document or thing; or

iii) elude legal process summoning him to testify or supply evidence; or

iv) absent himself from any proceeding or investigation to which he has been legally summoned; or

(b) he harms another by an unlawful act in retaliation for anything done by another in his capacity as a witness or informant; or

(c) he solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in this Section.

(2) Tampering with witnesses is a Class A offense if the actor employs force, deception, threat or offer of a valuable benefit; otherwise, tampering with witnesses is a Class B offense.

§13-4-78. Tampering with Evidence.

(1) A person is guilty of tampering with evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(a) alters, destroys, conceals or removes any record, document, or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) makes, presents or uses any record, document, or thing knowing it to be false and with a purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

(2) Tampering with evidence is a Class B offense.

§13-4-79. Tampering with Public Records.

(1) A person is guilty of tampering with public records if he:

(a) knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to or received or kept by, the Tribe or government for information or record, or required by law to be kept by others for information of the Tribe or government; or

(b) makes, presents or uses any record, document, or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in a) above; or

(c) purposely and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

(2) Tampering with public records is a Class B offense.

§13-4-80. Impersonating a Public Servant.

(1) A person is guilty of impersonating a public servant if he falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

(2) Impersonating a public servant is a Class B offense.

§13-4-81. Definitions Applicable to This Part.

(1) "Official proceeding" means any proceeding before a legislative, judicial, administrative, or other Tribal or governmental body or official authorized by law to take evidence under oath or affirmation, including a Notary Public or other person taking evidence in connection with any of these proceedings.

(2) "Statement" means any representation, but includes a representation of opinion, belief or other state of mind only if the representation clearly relates to the state of mind apart from or in addition to any facts which are the subject of the representation.

(3) "Public servant" means any officer or employee of the Tribe or government, including judges and Tribal leaders, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function, but the term does not include witnesses.

(4) "Government" includes Tribal, State, local and Federal governments.

(5) "Harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any other person or entity in whose welfare he is interested.

(6) "Benefit" means gain or advantage, or anything regarded as gain or advantage, including benefit to any other person, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate promises to support or oppose.

4. Obstructing Governmental Operations.

§13-4-82. Obstructing Governmental Function.

(1) A person is guilty of obstructing governmental function if:

(a) he uses force, violence, intimidation, or engages in any other unlawful act with a purpose to interfere with a public servant performing or purporting to perform an official function; or

(b) he purposely obstructs, impairs, or prevents the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this Section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

(2) Obstructing governmental function is a Class B offense.

§13-4-83. Resisting Arrest.

(1) A person is guilty of resisting arrest if, for the purpose of preventing a law enforcement officer from effecting an arrest or detention of himself or of any other person, or of discharging any other duty, the person creates a substantial risk of bodily harm to anyone or employs means justifying or requiring substantial force to overcome the resistance, regardless of whether there is a legal basis for the arrest or detention.

(2) Resisting arrest is a Class C offense.

§13-4-84. Obstructing Justice.

(1) A person is guilty of obstructing justice if, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for the commission of an offense, he:

(a) harbors or conceals the other; or

(b) provides or aids in providing a weapon, transportation, disguise or other means of avoiding apprehension or effecting escape; or

(c) conceals or destroys evidence of the offense, or tampers with a witness, informant, document or other source of information, regardless of its admissibility in evidence; or

(d) warns the other of impending discovery or apprehension, except if such warning is given in an attempt to get the other person to comply with the law; or

(e) volunteers false information to a law enforcement officer for the purpose of preventing the apprehension of another; or

(f) obstructs by force, threat, bribery or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of another person.

(2) Obstructing justice is a Class B offense if the offense committed or charged or liable to be charged against the person aided is a Class A offense; otherwise, obstructing justice is a Class C offense.

§13-4-85. Refusing to Aid An Officer.

(1) A person is guilty of refusing to aid an officer if he knowingly or recklessly refuses to aid a law enforcement officer or fireman in the performance of his official duties when called upon by the officer to do so.

(2) Refusing to aid an officer is a Class C offense.

§13-4-86. Escape.

(1) A person is guilty of escape if he unlawfully removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period. "Official detention" means arrest, detention in any facility for custody of persons under charge or conviction of crime; or any other detention for law enforcement purposes; but "official detention" does not include supervision of probation or parole, or constraint incident to release on bail.

(2) A person is guilty of escape if he:

(a) aids another person to escape from official detention; or

(b) knowingly provides a person in official detention with anything which may facilitate such person's escape; or

(c) being a person in official detention, he knowingly procures, makes, or possesses anything which may facilitate escape.

(3) Escape is:

(a) a Class B offense if the detainee was under arrest for or detained on a charge of a Class A offense or following conviction for any offense; or

(b) a Class B offense if the actor employs force, threat, deadly weapon or other dangerous instrumentality to effect the escape; or

(c) a Class B offense if a public servant concerned with detention of persons purposely facilitates or permits an escape from a detention facility.

(d) A Class C offense for all other cases.

§13-4-87. Providing Contraband.

(1) A person is guilty of providing contraband if he knowingly provides a person in official detention with alcoholic beverages, drugs, weapons, implements of escape or any other thing or substance which the actor knows it is unlawful or improper for the detainee to possess.

(2) Providing contraband is a Class C offense.

§13-4-88. Bail Jumping.

(1) A person is guilty of bail jumping if, having been released on bail or on his own recognizance by court order or other lawful authority upon condition that he subsequently appear on a charge of an offense, he fails without just cause to appear in person or in the case where a Class C offense is charged, by counsel at the time and place which have been lawfully designated for his appearance.

(2) Bail jumping is an offense of the next lower degree as the offense originally charged for which the actor was released, or, if more than one offense was charged, for the highest degree of such offenses, but not less than a Class C offense.

§13-4-89. Doing Business Without a License.

(1) A person is guilty of doing business without a license if he commences or carries on any business, trade, profession, or calling the transaction or carrying on of which is required by law to be licensed, without having an appropriate license.

(2) Doing business without a license is a Class C offense.

§13-4-90. Tampering with Public Property.

(1) A person is guilty of tampering with public property if:

(a) he steals, defaces, mutilates, alters, falsifies, or removes all or part of any record, map, book, document or thing, or any court documents or records, placed or filed in any public office or with any public officer, or if he permits another to do so; or

(b) he knowingly injures, defaces or removes any signal, monument or other marker placed or erected as part of an official survey of the Tribe or state or Federal government without authority to do so; or

(c) he intentionally defaces, obliterates, tears down, or destroys any copy or transcript or extract from any law, or any proclamation, advertisement, or notice set up or displayed by any public officer or court, without authority to do so and before the expiration of the time for which the same was to remain set up.

(2) Tampering with public property is a Class C offense.

§13-4-91. Injuring Public Property.

(1) A person is guilty of injuring public property if he:

(a) intentionally breaks down, pulls down or otherwise injures or destroys any jail or other place of confinement; or

(b) intentionally and without authority to do so digs up, removes, displaces or otherwise injures or destroys any public road, highway or bridge or private road or bridge or other public building or structure; or

(c) removes or injures any milepost, guidepost or road or highway sign or marker or any inscription on them while such is erected along a road or highway.

(2) Injuring public property is a Class B offense if the injury is to a jail or place of confinement or the value of the damage done exceeds \$100.00; otherwise, injuring public property is a Class C offense.

§13-4-92. Failure to Obey a Lawful Order of the Court.

(1) A person is guilty of failure to obey a lawful order of the Court if he purposely or knowingly fails to obey an order, subpoena, warrant or command duly made, issued or given by a Court of the Ute Indian Tribe or any officer thereof or otherwise issued according to law without just cause.

(2) This Section shall not apply to a failure to appear as a party in a civil action where default or a similar remedy is available to the other party.

(3) Failure to obey a lawful order of the court is a Class C offense.

F. Offenses Against Public Order and Decency.

1. Breaches of the Peace and Related Offenses.

§13-4-93. Riot.

(1) A person is guilty of riot if:

(a) simultaneously with two or more other persons he engages in tumultuous or violent conduct and thereby knowingly or recklessly creates a substantial risk of causing public alarm; or

(b) he assembles with two or more persons with the purpose of engaging soon thereafter in tumultuous or violent conduct, believing that two or more persons in the assembly have the same purpose.

(2) Riot is a Class A offense.

§13-4-94. Failure to Disperse.

(1) A person is guilty of failure to disperse if he refuses or knowingly fails to obey an order to disperse or leave the immediate vicinity given by a law enforcement officer or other public servant performing a law enforcement function, at the scene of a riot, fire, or other public disorder or given in the course of executing or enforcing the law or in the course of the investigation of the commission of an accident, fire, offense or suspected offense.

(2) Failure to disperse is a Class C offense.

§13-4-95. Disorderly Conduct.

(1) A person is guilty of disorderly conduct if, with a purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

(a) engages in fighting or threatening or in violent or tumultuous behavior; or

(b) makes unreasonable noise or offensively coarse utterances, gestures, or displays, 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) appears in public place in an intoxicated condition and does any of the following:

i) passes out or falls or is found asleep in a public place or on the property of another without permission; or

ii) bothers, disrupts or otherwise intrudes upon another person or group of persons; or

iii) wanders about without being able to give a reasonable account of his destination to a law enforcement officer; or

iv) appears or is found in an area set aside for religious or ceremonial activities which have been traditionally or by order of the Tribal or conducting authorities set aside for use free from alcoholic beverage consumption or the presence of intoxicated persons during the period of such a religious or ceremonial activity.

(2) "Public" means affecting or likely to affect persons in a place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, the common areas of schools, hospitals, apartment houses, and office buildings, transport facilities, businesses open to the public, and places of entertainment or amusement.

(3) Disorderly conduct is a Class C offense.

§13-4-96. False Reports.

(1) A person is guilty of false reports if he initiates or circulates a report or warning of a fire, bombing, or other crime or catastrophe, knowing that the report or warning is false or baseless and that it is likely to cause evacuation of any building, place of assembly, or facility of public transport, or to cause public inconvenience or alarm or action of any sort by an official or volunteer agency organized to deal with emergencies.

(2) False reports is a Class B offense.

§13-4-97. Harassment.

(1) A person is guilty of harassment if, with purpose to annoy or alarm another, he:

(a) makes a telephone call without purpose of legitimate communication; or

(b) insults, taunts, or challenges another in a manner likely to provoke a violent or disorderly response; or

(c) make repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language; or

(d) engages in any other course of conduct serving no legitimate purpose of the actor which he knows tends to seriously annoy or alarm another.

(2) Harassment is a Class C offense.

§13-4-98. Emergency Telephone Abuse.

(1) A person is guilty of emergency telephone abuse if he:

(a) knowingly refuses to yield or surrender the use of a party line or public pay telephone to another person upon being informed that said telephone is needed to report a fire, or summon police, medical or other aid in case of an emergency, unless the actor is already using said telephone to report an emergency; or

(b) asks for or requests the use of a party line or public pay phone on the pretext that an emergency exists, knowing that no emergency exists.

(2) "Emergency" means a situation in which property or human life or safety is in jeopardy and the prompt summoning of aid is or reasonably appears to be essential to preservation of human life, safety or property.

(3) Emergency telephone abuse is a Class C offense.

§13-4-99. Disrupting.

(1) A person is guilty of disrupting if, with a purpose to prevent or disrupt a lawful meeting, procession or gathering, he does any act tending to obstruct or interfere with it physically, or makes any utterance, gesture or display designed to outrage the sensibilities of the group or prevent the assembly from conducting its business.

(2) Disrupting is a Class C offense.

§13-4-100. Desecration.

(1) A person is guilty of desecration if he purposely desecrates any public monument or structure, or place of worship or burial.

(2) "Desecrate" means defacing, damaging, polluting or otherwise physically mistreating in a way that the actor knows or believes will outrage the sensibilities of persons likely to observe or discover his action.

(3) Desecration is a Class C offense.

§13-4-101. Abusing a Corpse.

(1) A person is guilty of abusing a corpse if he purposely and unlawfully:

- (a) removes, conceals, dissects, or destroys a corpse or any part of a corpse; or
- (b) disinters a corpse that has been buried or otherwise interred; or
- (c) treats a corpse in a way he knows would outrage ordinary sensibilities.

(2) Abusing a corpse is a Class C offense.

§13-4-102. Cruelty to Animals.

(1) A person is guilty of cruelty to animals if he purposely or knowingly:

- (a) tortures or seriously overworks an animal; or
- (b) fails to provide necessary food, care, or shelter for an animal in his custody; or
- (c) abandons an animal in his custody; or
- (d) transports or confines an animal in a cruel manner; or
- (e) kills, injures or administers poison to an animal without legal privilege to do so; or
- (f) causes one animal to fight with another.

(2) It is a defense to prosecution under this Section that the conduct of the actor toward the animal was an accepted veterinary practice or directly related to a bona fide experimentation for scientific research provided that if the animal is to be destroyed, the manner employed will not be unnecessarily cruel unless directly necessary to the veterinary purpose or scientific research involved.

(3) Cruelty to animals is a Class C offense.

§13-4-103. Violation of Privacy.

(1) A person is guilty of violation of privacy if, except as authorized by law, he:

- (a) trespasses on property with intent to subject anyone to eavesdropping or other surveillance in a private place; or
- (b) installs in any private place, without the consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in such place, or uses any such unauthorized installation; or
- (c) installs or uses outside of any private place any device for hearing, recording, amplifying, or broadcasting sounds originating in such place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there; or

(d) intercepts without consent of the sender or receiver a message by telephone, telegraph, letter or other means of communicating privately; but this sub-paragraph does not apply to:

- i) overhearing of messages through a regularly installed instrument on a telephone party line or extensions, or
- ii) interception by the telephone company or subscriber incident to enforcement of regulations limiting use of the facilities or to other normal operation or use; or

(e) divulges without the consent of the sender or receiver the existence or contents of any such message if the actor knows that the message was illegally intercepted, or if he learned of the message in the course of employment with an agency engaged in transmitting it.

(2) Definitions:

(a) "Eavesdrop" means to overhear, record, amplify, or transmit any part of an oral or written communication of others without the consent of at least one party thereto by means of any electrical, mechanical, or other device.

(b) "Private place" means a place, where one can reasonably expect to be safe from casual or hostile intrusion or surveillance.

(3) Violation of privacy is a Class C offense.

§13-4-104. Criminal Defamation.

(1) A person is guilty of criminal defamation if he knowingly and with malicious intent communicates to any person orally or in writing any information which he knows or should know to be false and knows that the information tends to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby expose him to public hatred, contempt or ridicule. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown by way of defense.

(2) It shall be a defense to criminal defamation that the person making the publication was at the time engaged in the formal broadcast or publication of news by some public means or media of communication and in good faith believed he was reporting a newsworthy event with a basis in truth.

(3) Criminal defamation is a Class C offense.

§13-4-105. Intoxication.

(1) A person is guilty of intoxication if, under circumstances not amounting to disorderly conduct, he is under the influence of an intoxicating beverage, drugs or other controlled substance, or a substance having the property of releasing vapors, to a degree that the person may endanger himself or another, in a public place or in a private place where he unreasonably disturbs another person.

(2) A judge or the arresting law enforcement officer may order the release from custody and the dropping of a charge under this section if he believes further imprisonment is unnecessary for the protection of the individual or another and the individual is in a sober condition at the time of release.

(3) Intoxication is a Class C offense.

§13-4-106. Possession of an Alcoholic Beverage By a Person Under 21.

(1) A person shall be guilty of possession of an alcoholic beverage by a person under 21 if, being under the age of 21 years old, he shall:

- (a) possess or consume any beer, wine, ale, whiskey or other alcoholic beverage; or
- (b) misrepresent his age for the purpose of buying or otherwise obtaining an alcoholic beverage; or

(c) appear in a public or private place while under the influence of an intoxicating beverage in any degree.

(2) Possession of an alcoholic beverage by a person under 21 is a Class C offense.

G. Offenses Against Public Health, Safety, Welfare and Morals.

§13-4-107. Prostitution.

(1) A person is guilty of prostitution if he or she:

(a) is an inmate or resident of a house of prostitution or otherwise engages in sexual activity as a business; or

(b) loiters in or within view of a public place for the purpose of being hired to engage in sexual activity; or

(c) engages in or offers or agrees to engage in any sexual activity with another person for a fee; or

(d) pays or offers or agrees to pay another person a fee for the purpose of engaging in an act of sexual activity; or

(e) enters or remains in a house of prostitution for the purpose of engaging in sexual activity; or

(f) owns, controls, manages, supervises, or otherwise keeps, alone or in association with another, a house of prostitution or a prostitution business; or

(g) solicits a person to patronize a prostitute; or

(h) procures or attempts to procure a prostitute for another; or

(i) leases or otherwise permits a place controlled by the actor, alone or in association with others, to be used for prostitution or the promotion of prostitution; or

(j) procures an inmate for a house of prostitution; or

(k) encourages, induces, or otherwise purposely causes another to become or remain a prostitute; or

(l) transports a person with a purpose to promote that person's engaging in prostitution or procuring or paying for transportation with that purpose; or

(m) not being the child or legal dependent of a prostitute, shares in the proceeds of a prostitute pursuant to an understanding that he is to share therein; or

(n) owns, operates, manages or controls a house of prostitution; or

(o) solicits, receives, or agrees to receive any benefit for doing any of the acts prohibited by this subsection.

(2) Definitions:

(a) "Sexual activity" means intercourse or any sexual act involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant.

(b) "House of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(c) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(d) "Public place" means any place to which the public or a substantial group thereof has access.

(3) On the issue of whether a place is a house of prostitution, the following shall be admissible in evidence: its general reputation; the reputation of the persons who reside in or frequent the place; the frequency, timing and duration of visits by non-residents. Testimony of a person against his spouse shall be admissible to prove offenses under this Section.

(4) Prostitution is a Class B offense.

§13-4-108. Spreading Venereal Disease.

(1) A person is guilty of spreading venereal disease if, knowing or having reason to believe he has a venereal disease, he shall infect another person with venereal disease.

(2) Spreading venereal disease is a Class C offense. The Court shall, upon conviction, have the power to order the medical examination and treatment of the convicted offender and may also order an investigation to determine to what extent others have or may have been infected by the convicted offender.

§13-4-109. Obscenity.

(1) A person is guilty of obscenity if he:

(a) sells, delivers or provides, or offers or agrees to sell, deliver or provide, any obscene writing, picture, record or other representation or embodiment that is obscene; or

(b) presents or directs an obscene play, dance, or performance, or participates in that portion thereof which makes it obscene; or

(c) publishes, exhibits or otherwise makes available any obscene material; or

(d) possesses any obscene material for purposes of sale or other commercial dissemination; or

(e) sells, advertises or otherwise commercially disseminates material, whether or not obscene, by representing or suggesting that it is obscene.

(2) Material is obscene if, considered as a whole:

(a) it lacks serious literary, artistic, political, or scientific value; and

(b) it depicts or describes nudity, sex or excretion in a patently offensive manner that goes substantially beyond customary limits of candor in describing or representing such matters; and

(c) if the average person, applying contemporary community standards, would find that the material, taken as a whole, appeals predominantly to a morbid or unnatural interest in nudity, sex, or excretion.

(3) A person who disseminates or possesses obscene material in the course of his business is presumed to do so knowingly or recklessly.

(4) Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or some other specially susceptible audience.

(5) Undeveloped photographs, molds, printing plates and the like, shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

(6) Expert testimony and testimony from the author, creator, publisher or other person from whom the material originated, relating to factors entering into the determination of the issue of obscenity, shall be admissible, but such evidence shall not be required to prove obscenity.

(7) It shall be a defense to a prosecution under this section that the dissemination of the obscene material was restricted to institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material.

(8) Obscenity is a Class B offense.

§13-4-110. Gambling.

(1) A person is guilty of gambling if he:

(a) participates in gambling; or

(b) knowingly permits any gambling to be played, conducted, or dealt upon or in any real or personal property owned, rented, or under the control of the actor, whether in whole or in part; or

(c) participates in gambling or wins or acquires to himself or another any gambling proceeds when he knows he has a lesser risk of losing or a greater chance of winning than one or more of the other participants, and the risk is not known to all participants; or

(d) derives or intends to derive an economic benefit other than personal winnings from gambling and either:

i) induces or aids another to engage in gambling; or

ii) knowingly invests in, finances, owns, controls, supervises, manages, or participates in any gambling operation; or

(e) knowingly possesses a gambling device or record with intent to use it in gambling.

(2) Definitions:

(a) "Gambling" means risking anything of value for a return or risking anything of value upon the outcome of a contest, game, gaming scheme, or gaming device when the return or outcome is based upon an element of chance and is in accord with an agreement or understanding that someone will receive something of value in the event of a certain outcome, or a lottery, but does not include any lawful business transaction or playing an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.

(b) "Gambling device or record" means anything specifically designed for use in gambling or used primarily for gambling.

(c) "Lottery" means any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining the property, upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance, regardless of whatever name such scheme may be known by.

(3) It shall not be an offense under this section for a person to engage in any traditional Indian games including, but not limited to, Monte, poker, cards, stick or hand games.

(4) Gambling is a Class C offense.

§13-4-111. Tobacco Offense.

(1) A person is guilty of tobacco offense if:

(a) being under the age of 19 years, he purchases, obtains, possesses, smokes, chews, inhales or ingests any product made from or with tobacco; or

(b) he sells to, or otherwise obtains for or arranges for the obtaining of tobacco or a tobacco product for a person under the age of 19, or knowingly permits such a person to operate a machine dispensing tobacco products in his place of business or in an area of a place of business over which he is charged with the management or operation.

(2) Tobacco offense is a Class C offense.

H. Weapons Offenses.

§13-4-112. Definitions.

As used in this part:

(1) (a) "Antique firearm" means:

(i) any firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898; or

(ii) a firearm that is a replica of any firearm described in this Subsection (1)(a), if the replica:

(A) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or

(B) uses rimfire or centerfire fixed ammunition which is:

(I) no longer manufactured in the United States; and

(II) is not readily available in ordinary channels of commercial trade; or

(iii) (A) that is a muzzle loading rifle, shotgun, or pistol; and

(B) is designed to use black powder, or a black powder substitute, and cannot use fixed ammunition.

(b) "Antique firearm" does not include:

(i) a weapon that incorporates a firearm frame or receiver;

(ii) a firearm that is converted into a muzzle loading weapon; or

(iii) a muzzle loading weapon that can be readily converted to fire fixed ammunition by replacing the:

(A) barrel;

(B) bolt;

(C) breechblock; or

(D) any combination of Subsection (1)(b)(iii)(A), (B), or (C).

(2) (a) "Concealed dangerous weapon" means a dangerous weapon that is:

(i) covered, hidden, or secreted in a manner that the public would not be aware of its presence; and

(ii) readily accessible for immediate use.

(b) A dangerous weapon is not a concealed dangerous weapon if it is a firearm which is unloaded and is securely encased.

(3) "Criminal history background check" means a criminal background check conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal Firearms Licensee, through the bureau or the local law enforcement agency where the firearms dealer conducts business.

(4) "Curio or relic firearm" means a firearm that:

(a) is of special interest to a collector because of a quality that is not associated with firearms intended for:

(i) sporting use;

(ii) use as an offensive weapon; or

(iii) use as a defensive weapon;

(b) (i) was manufactured at least 50 years before the current date; and
(ii) is not a replica of a firearm described in Subsection (5)(b)(i);

(c) is certified by the curator of a municipal, state, or federal museum that exhibits firearms to be a curio or relic of museum interest;

(d) derives a substantial part of its monetary value:

(i) from the fact that the firearm is:

(A) novel;

(B) rare; or

(C) bizarre; or

(ii) because of the firearm's association with an historical:

(A) figure;

(B) period; or

(C) event; and

(e) has been designated as a curio or relic firearm by the director of the United States Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. 178.11.

(5) (a) "Dangerous weapon" means an item that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(b) The following factors shall be used in determining whether a knife, or another item, object, or thing not commonly known as a dangerous weapon is a dangerous weapon:

(i) the character of the instrument, object, or thing;

(ii) the character of the wound produced, if any;

(iii) the manner in which the instrument, object, or thing was used; and

(iv) the other lawful purposes for which the instrument, object, or thing may be used.

(6) "Dealer" means a person who is:

(a) licensed under 18 U.S.C. Sec. 923; and

(b) engaged in the business of selling, leasing, or otherwise transferring a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

(7) "Enter" means intrusion of the entire body.

(8) "Federal Firearms Licensee" means a person who:

(a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and

(b) is engaged in the activities authorized by the specific category of license held.

(9) "Firearm" means a pistol, revolver, shotgun, short barrel shotgun, rifle or short barrel rifle, or a device that could be used as a dangerous weapon from which is expelled a projectile by action of an explosive.

(10) "Firearms transaction record form" means a form created by the bureau to be completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

(11) "Fully automatic weapon" means a firearm which fires, is designed to fire, or can be readily restored to fire, automatically more than one shot without manual reloading by a single function of the trigger.

(12) "Handgun" means a pistol, revolver, or other firearm of any description, loaded or unloaded, from which a shot, bullet, or other missile can be discharged, the length of which, not including any revolving, detachable, or magazine

breech, does not exceed 12 inches.

(13) "House of worship" means a church, temple, synagogue, mosque, or other building set apart primarily for the purpose of worship in which religious services are held and the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose.

(14) "Prohibited area" means a place where it is unlawful to discharge a firearm.

(15) "Readily accessible for immediate use" means that a firearm or other dangerous weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as readily as if carried on the person.

(16) "Residence" means an improvement to real property used or occupied as a primary or secondary residence.

(17) "Securely encased" means not readily accessible for immediate use, such as held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other storage area of a motor vehicle, not including a glove box or console box.

(18) "Short barrel shotgun" or "short barrel rifle" means a shotgun having a barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer than 16 inches in length, or a dangerous weapon made from a rifle or shotgun by alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer than 26 inches.

§13-4-113. When weapon deemed loaded.

(1) For the purpose of this chapter, any pistol, revolver, shotgun, rifle, or other weapon described in this part shall be deemed to be loaded when there is an unexpended cartridge, shell, or projectile in the firing position.

(2) Pistols and revolvers shall also be deemed to be loaded when an unexpended cartridge, shell, or projectile is in a position whereby the manual operation of any mechanism once would cause the unexpended cartridge, shell, or projectile to be fired.

(3) A muzzle loading firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinders.

§13-4-114. Carrying loaded firearm in vehicle or on street.

(1) Unless otherwise authorized by law, a person may not carry a loaded firearm:

(a) in or on a vehicle, unless:

(i) the vehicle is in the person's lawful possession; or

(ii) the person is carrying the loaded firearm in a vehicle with the consent of the person lawfully in possession of the vehicle;

(b) on a public street; or

(c) in a posted prohibited area.

(2) Subsection (1)(a) does not apply to a minor under 18 years of age, since a minor under 18 years of age may not carry a loaded firearm in or on a vehicle.

(3) Notwithstanding Subsection (1)(a)(i) and (ii), a person may not possess a loaded rifle, shotgun, or muzzle-loading rifle in a vehicle.

(4) A violation of this section is a Class B offense.

§13-4-115. Carrying concealed dangerous weapon – Penalties.

(1) Except as authorized by law, a person who carries a concealed dangerous weapon, as defined in Section 13-4-112, including an unloaded firearm on his or her person or one that is readily accessible for immediate use which is not securely encased, as defined in this part, in or on a place other than the person's residence, property, a vehicle in the person's lawful possession, or a vehicle, with the consent of the individual who is lawfully in possession of the vehicle, or business under the person's control is guilty of a Class B offense.

(2) A person who carries a concealed dangerous weapon which is a loaded firearm in violation of Subsection (1) is guilty of a Class A offense.

(3) A person who carries concealed an unlawfully possessed short barrel shotgun or a short barrel rifle is guilty of a Class A offense with a sentence enhancement of double the penalties otherwise applicable to a Class A offense up to a maximum of 3 years jail time and/or a \$15,000 fine per offense.

(4) If the concealed firearm is used in the commission of a Class A offense, and the person is a party to the offense, the person is guilty of a Class A offense with a sentence enhancement of double the penalties otherwise applicable to a Class A offense up to a maximum of 3 years jail time and/or a \$15,000 fine per offense.

§13-4-116. Threatening with or using dangerous weapon in fight or quarrel.

(1) As used in this section, "threatening manner" does not include:

(a) the possession of a dangerous weapon, whether visible or concealed, without additional behavior which is threatening.

(2) A person who, in the presence of two or more persons, draws or exhibits a dangerous weapon in an angry and threatening manner or unlawfully uses a dangerous weapon in a fight or quarrel is guilty of a Class A offense.

(3) This section does not apply to a person who with purpose to prevent another's use of unlawful force:

(a) threatens the use of a dangerous weapon; or

(b) draws or exhibits a dangerous weapon.

§13-4-117. Possession of deadly weapon with intent to assault.

Every person having upon his person any dangerous weapon with intent to unlawfully assault another is guilty of a Class A offense.

§13-4-118. Discharge of firearm from a vehicle, near a highway, or in direction of any person, building, or vehicle – Penalties.

(1) (a) A person may not discharge any kind of dangerous weapon or firearm:

(i) from an automobile or other vehicle;

(ii) from, upon, or across any highway;

(iii) at any road signs;

(iv) at any communications equipment or property of public utilities including facilities, lines, poles, or devices of transmission or distribution;

(v) at railroad equipment or facilities including any sign or signal;

(vi) in any public place, including communities;

(vii) within designated camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches; or

(viii) without written permission to discharge the dangerous weapon from the owner or person in charge of the property within 600 feet of:

(A) a house, dwelling, or any other building; or

(B) any structure in which a domestic animal is kept or fed, including a barn, poultry yard, corral, feeding pen, or stockyard.

(b) It is a defense to any charge for violating this section that the person being accused had actual permission of the owner or person in charge of the property at the time in question.

(2) A violation of any provision of Subsection (1) is a Class B offense.

(3) This section does not apply to a person who:

(a) discharges any kind of firearm when that person is in lawful defense of self or others;

(b) is performing official duties and as otherwise provided by law; or

(c) discharges a dangerous weapon or firearm from an automobile or other vehicle, if:

(i) the discharge occurs at a firing range or training ground;

(ii) at no time after the discharge does the projectile that is discharged cross over or stop at a location other than within the boundaries of the firing range or training ground described in Subsection (4)(c)(i);

(iii) the discharge is made as practice or training for a lawful purpose;

(iv) the discharge and the location, time, and manner of the discharge are approved by the owner or operator of the firing range or training ground prior to the discharge; and

(v) the discharge is not made in violation of Subsection (1).

§13-4-119. Possession of dangerous weapon by minor.

(1) A minor under 18 years of age may not possess a dangerous weapon unless he:

(a) has the permission of his parent or guardian to have the weapon; or

(b) is accompanied by a parent or guardian while he has the weapon in his possession.

(2) Any minor under 14 years of age in possession of a dangerous weapon shall be accompanied by a responsible adult.

(3) Any person who violates this section is guilty of:

(a) a Class B offense upon the first offense; and

(b) a Class A offense for each subsequent offense.

§13-4-120. Parent or guardian providing firearm to violent minor.

(1) A parent or guardian may not intentionally or knowingly provide a firearm to, or permit the possession of a firearm by, any minor who has been convicted of a Class A offense or any minor who has been adjudicated in juvenile court for an offense which would constitute a Class A offense if the minor were an adult.

(2) Any person who violates this section is guilty of:

(a) a Class A offense upon the first offense; and

(b) double the penalties otherwise applicable to a Class A offense up to a maximum of 3 years jail time and/or a \$15,000 fine for each subsequent offense.

§13-4-121. Parent or guardian knowing of minor's possession of dangerous weapon

Any parent or guardian of a minor who knows that the minor is in possession of a dangerous weapon and fails to make reasonable efforts to remove the firearm from the minor's possession is guilty of a Class B offense.

§ 13-4-122. Disposition of weapons after use for court purposes.

All law enforcement which have in their possession a weapon after it has been used for court purposes shall determine the true owner of the weapon and return it to him; however, if unable to determine the true owner of the weapon, or if the true owner is the person committing the crime for which the weapon was used as evidence, law enforcement shall confiscate it and it shall revert to that agency for their use and/or disposal as the head of law enforcement determines.

§13-4-123. Other Weapons Offenses.

(1) A person shall be guilty of weapons offense if:

(a) being addicted to any narcotic drug, or having been declared mentally incompetent, he owns or has in his possession or under his custody or control a dangerous weapon; or

(b) being intoxicated or otherwise under the influence of alcoholic beverages or other intoxicating substance, drug, or medicine, he has a dangerous weapon in his possession or under his custody or control.

§13-4-124. Manufacture, possession, sale, use, or attempted use of a weapon of mass destruction prohibited – Penalties.

A person who without lawful authority intentionally or knowingly manufactures, possesses, sells, delivers, displays, uses, attempts to use, solicits the use of, or conspires to use a weapon of mass destruction or a delivery system for a weapon of mass destruction, including any biological agent, toxin, vector, or delivery system as those terms are defined in this section, is guilty of a Class A offense and is subject to an enhanced penalty of double the sentence of a Class A offense up to a maximum of 3 years jail time and/or a \$15,000 fine per offense.

As used in this part:

(1) "Biological agent" means any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance, or biological product, that is capable of causing:

- (a) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;
- (b) deterioration of food, water, equipment, supplies, or material of any kind; or
- (c) deleterious alteration of the environment.

(2) "Delivery system" means:

- (a) any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector; or
- (b) any vector.

(3) "Hoax weapon of mass destruction" means any device or object that by its design, construction, content, or characteristics appears to be or to contain, or is represented to be, constitute, or contain, a weapon of mass destruction as defined in this section, but which is, in fact, an inoperative facsimile, imitation, counterfeit, or representation of a weapon of mass destruction which does not:

- (a) meet the definition of a weapon of mass destruction; or
- (b) actually contain or constitute a weapon, biological agent, toxin, vector, or delivery system prohibited by this section.

(4) "Toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:

- (a) any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or
- (b) any poisonous isomer or biological product, homolog, or derivative of the substance under Subsection (4)(a).

(5) "Vector" means a living organism, or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host.

(6) (a) "Weapon of mass destruction" means:

- (i) any item or instrumentality that is designed or intended to cause widespread death or serious bodily injury to multiple victims;
- (ii) any item or instrumentality that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;
- (iii) any disease organism, including any biological agent, toxin, or vector which is used or intended to be used as a weapon;
- (iv) any item or instrumentality that is designed to release radiation or radioactivity at a level dangerous to human life

and that is used or intended to be used as a weapon; or
(v) any substance or material or combination which has been prepared or altered for use in the creation of a weapon described in Subsections (6)(a)(i) through (iv).

(b) "Weapon of mass destruction" does not include firearms or rifle, pistol, or shotgun ammunition, reloading components, or muzzleloading equipment.

§13-4-125. Manufacture, possession, sale, use, or attempted use of a hoax weapon of mass destruction prohibited – Penalty.

Any person who without lawful authority intentionally or knowingly manufactures, possesses, sells, delivers, displays, uses, attempts to use, solicits the use of, or conspires to use a hoax weapon of mass destruction with the intent to deceive or otherwise mislead another person into believing that the hoax weapon of mass destruction is a weapon of mass destruction is guilty of a second degree felony.

§13-4-126. Exemptions.

This part does not apply to any member or employee of the Armed Forces of the United States, allied armed forces personnel, a federal or state governmental agency, or a private entity, who is engaged in lawful activity within the scope of his or her employment, if the person is authorized or licensed to manufacture, possess, sell, deliver, display, or otherwise engage in activity relative to this section and if the person is in compliance with applicable federal and state law.

§13-4-127. Possession of a dangerous weapon, firearm, or sawed-off shotgun on or about school premises – Penalties.

(1) As used in this section, "on or about school premises" means:

- (a) (i) in a public or private elementary or secondary school; or
- (ii) on the grounds of any of those schools;
- (b) (i) in a public or private institution of higher education; or
- (ii) on the grounds of a public or private institution of higher education; and
- (iii) (A) inside the building where a preschool or child care is being held, if the entire building is being used for the operation of the preschool or child care; or
- (B) if only a portion of a building is being used to operate a preschool or child care, in that room or rooms where the preschool or child care operation is being held.

(2) A person may not possess any dangerous weapon, firearm, or sawed-off shotgun, at a place that the person knows, or has reasonable cause to believe, is on or about school premises as defined in this section.

(3) (a) Possession of a dangerous weapon on or about school premises is a Class B offense.

(b) Possession of a firearm or sawed-off shotgun on or about school premises is a Class A offense.

(4) This section does not apply if:

- (a) the person is authorized to possess a firearm by law;
- (b) the possession is approved by the responsible school administrator;
- (c) the item is present or to be used in connection with a lawful, approved activity and is in the possession or under the control of the person responsible for its possession or use; or
- (d) the possession is:
 - (i) at the person's place of residence or on the person's property; or
 - (ii) in any vehicle lawfully under the person's control, other than a vehicle owned by the school or used by the school to transport students.

(5) This section does not prohibit prosecution of a more serious weapons offense that may occur on or about school premises.

§13-4-128. Dangerous Devices.

(1) A person is guilty of dangerous devices if he:

(a) delivers or causes to be delivered to any express, railway company or common carrier, or places in the mail or delivers to any person, or throws or places on or about the premises or property of another or in any place where another may be injured thereby, a dangerous device, knowing it to be such, unless he informs the threatened person of the nature thereof and its placement is for some lawful purpose; or

(b) knowingly constructs or contrives any dangerous device, or with intent to injure another in his person or property, has a dangerous device in his possession.

(2) For purposes of this Section, a "dangerous device" is any box, package, contrivance, bomb, or apparatus containing or arranged with an explosive or acid or poisonous or inflammable substance, chemical, or compound, or knife, loaded firearm or other dangerous or harmful weapon or thing, constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or to strike with any of its part, unexpectedly when moved, handled, or opened or after the lapse of time or under conditions or in a manner calculated to endanger health, life, limb, or property.

(3) Dangerous devices is a Class A offense. **I. Controlled Substances Offenses.**

§13-4-129. Definitions.

(1) "Controlled substance" means any drug, substance, or precursor listed in this Chapter.

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

(3) "Dispense" means to deliver a controlled substance to the ultimate user or human research subject pursuant to the lawful directive of a practitioner.

(4) "Distribute" means to deliver, other than dispensing, controlled substance, a controlled substance or marijuana. Distribution of controlled substance, a controlled substance or marijuana shall include deliver by gift or exchange without consideration.

(5) "Drug paraphernalia" means equipment or materials of any kind which are primarily used or intended for use by the person in possession of them, in planting, cultivating, growing, harvesting, manufacturing, converting, processing, preparing, testing, storing, packaging, ingesting, inhaling or otherwise introducing into the human body controlled substance, any controlled substance or marijuana in violation of this Title XIII.

(6) "Manufacture" means to produce, prepare, compound, convert, process, synthesize, concentrate, purify, separate, extract, or package any controlled substance, marijuana, controlled substance, controlled substance precursor, controlled substance manufacturing catalyst, controlled substance manufacturing reagent, controlled substance manufacturing solvent, or any substance containing any of the foregoing. A "manufacturer" does not include a practitioner who lawfully manufactures a controlled substance or marijuana.

(7) "Participate" or "participation" in the manufacture of controlled substance means to produce, prepare, compound, convert, process, synthesize, concentrate, purify, separate, extract, or package any controlled substance, controlled substance precursor, controlled substance manufacturing catalyst, controlled substance manufacturing reagent, controlled substance manufacturing solvent, or any substance containing any of the foregoing, or to assist in any of these actions, or to attempt to take any of these actions, regardless of whether this action or these actions result in the production of finished controlled substance.

(8) "Possession" means the actual care, custody, control or management of controlled substance, a controlled substance, or marijuana.

§13-4-130. Controlled Substances.

(1) Schedule I Controlled Substances

(a) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation

- i. Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidiny]-N-phenylacetamide)
- ii. Acetylmethadol
- iii. Allyprodine
- iv. Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM)
- v. Alphameprodine
- vi. Alphamethadol
- vii. Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine)
- viii. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidiny]-N-phenylpropanamide)
- ix. Benzethidine
- x. Betacetylmethadol
- xi. Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidiny]-N-phenylpropanamide)
- xii. Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidiny]-N-phenylpropanamide)
- xiii. Betameprodine
- xiv. Betamethadol
- xv. Betaprodine
- xvi. Clonitazene
- xvii. Dextromoramide
- xviii. Diampromide
- xix. Diethylthiambutene
- xx. Difenoazin
- xxi. Dimenoxadol
- xxi. Dimepheptanol
- xxiii. Dimethylthiambutene
- xxiv. Dioxaphetyl butyrate

- xxv. Dipipanone
- xxvi. Ethylmethylthiambutene
- xxvii. Etonitazene
- xxviii. Etoxidine
- xxix. Furethidine
- xxx. Hydroxypethidine
- xxxi. Ketobemidone
- xxxii. Levomoramide
- xxxiii. Levophenacymorphan
- xxxiv. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide)
- xxxv. 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidyl)-N-phenylpropanamide)
- xxxvi. Morpheridine
- xxxvii. MPPP (1-methyl-4-phenyl-4-propionoxypiperidine)
- xxxviii. Noracymethadol
- xxxix. Norlevorphanol
- xl. Normethadone
- xli. Norpipanone
- xlii. Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide)
- xliii. PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine)
- xliv. Phenadoxone
- xlv. Phenampromide
- xlvi. Phenomorphan
- xlvii. Phenoperidine
- xlviii. Piritramide
- xlix. Proheptazine
- i. Properidine
- ii. Propiram

- lii. Racemoramide
- liii. Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide)
- liv. Tilidine
- lv. Trimeperidine

(b) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- i. Acetorphine
- ii. Acetyldihydrocodeine
- iii. Benzylmorphine
- iv. Codeine methylbromide
- v. Codeine-N-Oxide
- vi. Cyprenorphine
- vii. Desomorphine
- viii. Dihydromorphine
- ix. Drotebanol
- x. Etorphine (except hydrochloride salt)
- xi. Heroin
- xii. Hydromorphanol
- xiii. Methyldesorphine
- xiv. Methyldihydromorphine
- xv. Morphine methylbromide
- xvi. Morphine methylsulfonate
- xvii. Morphine-N-Oxide
- xviii. Myrophine
- xix. Nicocodeine
- xx. Nicomorphine
- xxi. Normorphine

xxil. Pholcodine

xxiii. Thebacon

(c) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

- i. Alpha-ethyltryptamine
- ii. Some trade or other names: etryptamine; Monase; α -ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; α -ET; and AET.
- iii. 4-bromo-2,5-dimethoxy-amphetamine
- iv. Some trade or other names: 4-bromo-2,5-dimethoxy-- α -methylphenethylamine; 4-bromo-2,5-DMA
- v. 4-Bromo-2,5-dimethoxyphenethylamine
- vi. Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus.
- vii. 2,5-dimethoxyamphetamine
- viii. Some trade or other names: 2,5-dimethoxy- α -methylphenethylamine; 2,5-DMA
- vix. 2,5-dimethoxy-4-ethylamphet-amine
- x. Some trade or other names: DOET
- xi. 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7)
- xii. 4-methoxyamphetamine
- xiii. Some trade or other names: 4-methoxy- α -methylphenethylamine; paramethoxyamphetamine, PMA
- xiv. 5-methoxy-3,4-methylenedioxy-amphetamine
- xv. 4-methyl-2,5-dimethoxy-amphetamine
- xvi. Some trade and other names: 4-methyl-2,5-dimethoxy- α -methylphenethylamine; "DOM"; and "STP"
- xvii. 3,4-methylenedioxy amphetamine
- xviii. 3,4-methylenedioxycontrolled substance (MDMA)
- xix. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA
- xx. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA

- xxi. 3,4,5-trimethoxy amphetamine
- xxii. 5-methoxy-N,N-dimethyltryptamine
- xxiii. Some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT
- xxiv. Alpha-methyltryptamine (other name: AMT)
- xxv. Bufotenine
- xxvi. Some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine
- xxvii. Diethyltryptamine
- xxviii. Some trade and other names: N,N-Diethyltryptamine; DET
- xxix. Dimethyltryptamine
- xxx. Some trade or other names: DMT
- xxxi. 5-methoxy-N,N-diisopropyltryptamine (other name: 5-MeO-DIPT)
- xxxii. Ibogaine
- xxxiii. Some trade and other names: 7-Ethyl-6,6 beta;,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepino [5,4-b] indole; Tabernanthe iboga
- xxxiv. Lysergic acid diethylamide
- xxxv. Marihuane
- xxxvii. Parahexyl--7374; some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl.
- xxxix. Meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts (Interprets 21 USC 812(c), Schedule I(c) (12))
- xl. N-ethyl-3-piperidyl benzilate
- xli. N-methyl-3-piperidyl benzilate
- xlii. Psilocybin
- xliii. Psilocyn
- xliv. Tetrahydrocannabinols
- xlv. Meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following: -1 cis or trans tetrahydrocannabinol, and their optical isomers -6 cis or trans tetrahydrocannabinol, and their optical isomers -3,4 cis or trans

tetrahydrocannabinol, and its optical isomers (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

xlvi. Ethylamine analog of phencyclidine

xlvii. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE

xlviii. Pyrrolidine analog of phencyclidine

xlix. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP

i. Thiophene analog of phencyclidine

ii. Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TCP, TCP

iii. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine

iiii. Some other names: TCPy

(d). Depressants Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

i. gamma-hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate)

ii. Mecloqualone

iii. Methaqualone

(e). Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

i. Aminorex (Some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine)

ii. N-Benzylpiperazine (some other names: BZP, 1-benzylpiperazine)

iii. Cathinone

iv. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone

v. Fenethylamine

vi. Methcathinone (Some other names: 2-(methylamino)-propionophenone; alpha-(methylamino)propionophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropionophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR1432), its salts, optical isomers and salts of optical isomers

vii. (+/-)-cis-4-methylaminorex ((+/-)-cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine)

viii. N-ethylamphetamine

ix. N,N-dimethylamphetamine (also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine)

(2) Schedule II

(a) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(b) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextrophan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

i. Codeine

ii. Dihydroetorphine

iii. Ethylmorphine

iv. Etorphine hydrochloride

v. Granulated opium

vi. Hydrocodone

vii. Hydromorphone

viii. Metopon

ix. Morphine

x. Opium extracts

xi. Opium fluid

xii. Oripavine

xiii. Oxycodone

xiv. Oxymorphone

xv. Powdered opium

xvi. Raw opium

xvii. Thebaine

xviii. Tincture of opium

(c) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in this section, except that these substances shall not include the isoquinoline alkaloids of opium.

(d) Opium poppy and poppy straw.

(e) Coca leaves and any salt, compound, derivative or preparation of coca leaves (including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

(f) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

(g) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

- i. Alfentanil
- ii. Alphaprodine
- iii. Anileridine
- iv. Bezitramide
- v. Bulk dextropropoxyphene (non-dosage forms)
- vi. Carfentanil
- vii. Dihydrocodeine
- viii. Diphenoxylate
- ix. Fentanyl
- x. Isomethadone
- xi. Levo-alpha-acetylmethadol [Some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM]
- xii. Levomethorphan
- xiii. Levorphanol
- xiv. Metazocine
- xv. Methadone
- xvi. Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane
- xvii. Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid
- xviii. Pethidine (meperidine)

- xix. Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine
- xx. Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate
- xxi. Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid
- xxii. Phenazocine
- xxiii. Piminodine
- xxiv. Racemethorphan
- xxv. Racemorphan
- xxvi. Remifentanil
- xxvii. Sufentanil
- xxviii. Tapentadol

(h) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- i. Amphetamine, its salts, optical isomers, and salts of its optical isomers
- ii. Controlled substance, its salts, isomers, and salts of its isomers
- iii. Phenmetrazine and its salts
- iv. Methylphenidate
- v. Lisdexamfetamine, its salts, isomers, and salts of its isomers

(i) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- i. Amobarbital
- ii. Glutethimide
- iii. Pentobarbital
- iv. Phencyclidine
- v. Secobarbital

(j) Hallucinogenic substances:

- i. Nabilone

(k) Immediate Precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

- i. Immediate precursor to amphetamine and controlled substance
- ii. Phenylacetone
- iii. Immediate precursor to phencyclidine (PCP):
- iv. 1-phenylcyclohexylamine
- v. 1-piperidinocyclohexanecarbonitrile (PCC)
- vi. Immediate precursor to fentanyl:
- vii. 4-anilino-N-phenethyl-4-piperidine (ANPP)

(3) Schedule III

(a) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, positional, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- i. Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations, as excepted compounds under the Code of Federal Regulations § 1308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances
- ii. Benzphetamine
- iii. Chlorphentermine
- iv. Clortermine
- v. Phendimetrazine

(b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

- i. Any compound, mixture, or preparation containing:
 1. Amobarbital
 2. Secobarbital
 3. Pentobarbital
 4. Any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository
- ii. Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof

- iii. Chlorhexadol
- iv. Embutramide
- v. Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act
- vi. Ketamine, its salts, isomers, and salts of isomers
- vii. [Some other names for ketamine: (\pm)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone]
- viii. Lysergic acid
- ix. Lysergic acid amide
- x. Methyprylon
- xi. Sulfondiethylmethane
- xii. Sulfonethylmethane
- xiii. Sulfonmethane
- xiv. Tiletamine and zolazepam or any salt thereof
- xv. Some trade or other names for a tiletamine-zolazepam combination product: Telazol Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon

(c) Nalorphine 9400

(d) Narcotic Drugs. Unless specifically excepted or unless listed in another schedule:

i. Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

- (1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium
- (2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts
- (3) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium
- (4) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts
- (5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts
- (6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts

ii. Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:

(1) Buprenorphine

(e) Anabolic Steroids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any quantity of the following substances, including its salts, esters and ethers:

i. Anabolic steroids

(f) Hallucinogenic substances.

i. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved product

ii. [Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol] or (-)-delta-9-(trans)-tetrahydrocannabinol]

(4) Schedule IV

(a) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below

i. Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit

ii. Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane)

(b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

i. Alprazolam

ii. Barbital

iii. Bromazepam

iv. Camazepam

v. Carisoprodol

vi. Chloral betaine

vii. Chloral hydrate

viii. Chlordiazepoxide

- ix. Clobazam
- x. Clonazepam
- xi. Clorazepate
- xii. Clotiazepam
- xiii. Cloxazolam
- xiv. Delorazepam
- xv. Diazepam
- xvi. Dichloraphenazone
- xvii. Estazolam
- xviii. Ethchlorvynol
- xix. Ethinamate
- xx. Ethyl loflazepate
- xxi. Fludiazepam
- xxii. Flunitrazepam
- xxiii. Flurazepam
- xxiv. Fospropofol
- xxv. Halazepam
- xxvi. Haloxazolam
- xxvii. Ketazolam
- xxviii. Loprazolam
- xxix. Lorazepam
- xxx. Lormetazepam
- xxxi. Mebutamate
- xxxii. Medazepam
- xxxiii. Meprobamate
- xxxiv. Methohexital
- xxxv. Methylphenobarbital (mephobarbital)

- xxxvi. Midazolam
- xxxvii. Nimetazepam
- xxxviii. Nitrazepam
- xxxix. Nordiazepam
- xl. Oxazepam
- xli. Oxazolam
- xlii. Paraldehyde
- xliii. Petrichloral
- xliv. Phenobarbital
- xliv. Pinazepam
- xlvi. Prazepam
- xlvii. Quazepam
- xlviii. Temazepam
- xlix. Tetrazepam
- I. Triazolam
- II. Zaleplon
- III. Zolpidem
- IIII. Zopiclone

(c) Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible

- i. Fenfluramine

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

- i. Cathine ((+)-norpseudoephedrine)
- ii. Diethylpropion
- iii. Fencamfamin
- iv. Fenproporex

- v. Mazindol
- vi. Mefenorex
- vii. Modafinil
- viii. Pemoline (including organometallic complexes and chelates thereof)
- ix. Phentermine
- x. Pipradrol
- xi. Sibutramine
- xii. SPA ((-)-1-dimethylamino- 1,2-diphenylethane)

(e) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

- i. Pentazocine
 - ii. Butorphanol (including its optical isomers)
- (5) Schedule V

(a) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

- i. [Reserved]

(b) Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

- i. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
- ii. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
- iii. Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
- iv. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
- v. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
- vi. Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers

- i. Pyrovalerone
- ii. [Reserved]

(d) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

- i. Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester]
- ii. Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]
- iii. Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid]

(6) Updates to Schedules or Excluded Substances

(a) This section shall always include any addition made by the federal government to the schedules of controlled substances.

(b) This section shall also include any and all exempt substances that currently exist or are amended into exempted substance.

(a) shall possess, sell, trade, transport, give away or manufacture an article or substance which contains any quantity of a substance classified as belonging in Schedule I of the Federal Controlled Substances Act, except peyote in the Native American Church; or

§13-4-131. Mescaline and Peyote Exemption.

1. The possession, sale, transport, manufacture, or use of peyote or mescaline when by a member of the Native American Church in or for a bona fide religious service shall not be a violation of this section.

§13-4-132. Other Exemptions

- 1. A non-narcotic substance which may be lawfully sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act; or
- 2. A substance which was obtained directly from or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice.

§ 13-4-133. Possession, Manufacture, Distribution, or Possession of a Controlled Substance With Intent to Distribute

- 1. Except as authorized by this Chapter, it is unlawful for any person to knowingly possess, manufacture, distribute or possess with intent to manufacture or distribute a controlled substance listed herein.
- 2. Punishment under this section shall be determined by the controlled substance being possessed, manufactured, distributed, or possessed with intent to distribute
 - I. Schedule I or Schedule II Controlled Substances
 - a. Possession, distribution, manufacture, or possession with intent to distribute of a controlled substance of less than one ounce shall be a Class C offense
 - b. Possession, distribution, manufacture, or possession with intent to distribute of a controlled substance of more than one ounce but less than one pound shall be a Class B offense

c. Possession, distribution, manufacture, or possession with intent to distribute of a controlled substance of more than one pound shall be a Class A offense

II. Class III or IV

a. Possession, distribution, manufacture, or possession with the intent to distribute of any Schedule III or Schedule IV controlled substance shall be a Class B offense

III. Class V

a. Possession, distribution, manufacture, or possession with the intent to distribute of any Schedule V controlled substance shall be a Class C offense.

§ 13-4-134. Aggravated Delivery or Possession

It is unlawful to engage in the aggravated delivery or possession with intent to deliver a controlled substance. A person engages in the aggravated delivery or possession of a controlled substance when the person violates Section 13-4-133 and:

a. the person is at least 18 years of age and knowingly delivers or possesses with intent to deliver the controlled substance to a minor;

b. the person is at least 18 years and knowingly uses, engages, employs, or causes another person to use, engage, or employ a minor to deliver the controlled substance;

c. the person knowingly delivers or possesses the controlled substance in any structure or vehicle protected by one or more firearms, explosive devices, booby traps, alarm systems, surveillance systems, guard dogs, or dangerous animals;

d. the person knowingly delivers or possesses the controlled substance in any school, on any real property comprising any school, or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school-related activity; or

e. the person delivers or causes another person to deliver the controlled substance to a woman who is pregnant.

f. The person delivers or causes another person to deliver the controlled substance within 1000 feet of a school or tribal building.

g. A person who violates this section is guilty of a Class A offense regardless of the controlled substance involved.

§ 13-4-135. Participation in Controlled Substance Manufacturing.

It is unlawful to knowingly participate in the manufacture of controlled substances. A violation of this Section is a Class A offense.

§ 13-4-136. Aggravated Participation in Controlled Substance Manufacturing.

It is unlawful to engage in aggravated participation in the manufacture of a controlled substance. A person engages in aggravated participation in the manufacture of a controlled substance when the person violates Section 13-4-135 and:

a. the person knowingly does so in a multi-unit dwelling;

- b. the person knowingly does so in a structure or vehicle where a minor child, a person with a disability, or an elder person who is incapable of adequately providing for their own health and personal care resides, is present, or is endangered by the manufacture of a controlled substance;
- c. the person does so in a structure or vehicle where a pregnant woman (including but not limited to the person herself) resides, is present, or is endangered by the controlled substance manufacture;
- d. the person knowingly does so in a structure or vehicle protected by one or more firearms, explosive devices, booby traps, alarm systems, surveillance systems, guard dogs, or dangerous animals;
- e. the controlled substance manufacturing in which the person participates is a contributing cause of the death, serious bodily injury, disability, or disfigurement of another person, including but not limited to an emergency service provider;
- f. the controlled substance manufacturing in which the person participates is a contributing cause of a fire or explosion that damages property belonging to another person;
- g. the person knowingly organizes, directs, or finances the controlled substance manufacturing or activities carried out in support of the controlled substance manufacturing; or
- h. the controlled substance manufacturing occurs within 1,000 feet of a Tribal building.

§ 13-4-137. Protection of Controlled Substance Manufacturing.

- 1. It is unlawful to engage in the protection of controlled substance manufacturing when the person knows that others have been participating, are participating, or will be participating in the manufacture of methamphetamine; and takes ONE of the following actions with the intent to help prevent detection of or interference with methamphetamine manufacturing
 - i. Serves as a lookout or guard
 - ii. Misinforms or misleads law enforcement as to the location or persons involved in the manufacture of a controlled substance
 - iii. Falsifies public records to prevent the detection of controlled substance manufacturing
 - iv. Threatens or intimidates others to prevent them from reporting production or manufacture of methamphetamine to law enforcement.
- 2. A person who violates paragraph (1) of this Section is guilty of a Class A offense.

§13-4-138. Controlled Substance Conspiracy.

- 1. It is unlawful to engage in a controlled substance conspiracy. A person engages in a controlled substance conspiracy when:
 - a. the person intends to violate one or more provisions of the Chapter; and
 - b. the person agrees with one or more person to violate one or more provisions of the Chapter; and
 - c. the person or any party to the agreement commits an act in furtherance of the agreement.
 - d. Violation of this section shall be a Class A offense.

§13-4-139. Use of Property.

1. It is unlawful for a person to knowingly use or allow the use of a vehicle, a structure, real property, or personal property within the person's control to help bring about a violation of this Title.
2. A person who violates paragraph (1) of this subsection is guilty of a Class A offense.

§13-4-140. Possession of Drug Paraphernalia.

1. It is unlawful for a person 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 a dangerous drug. A person who violates this section is guilty of a Class C offense.

§13-4-141. Waters Offense.

(1) A person is guilty of waters offense if he:

(a) interferes with or alters the flow of water in any stream, river, ditch, canal or lateral without lawful authority to do so and in violation of the right of any other person; or

(b) knowingly breaks, injures, alters or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure intended to create hydraulic power or pressure or direct the flow of water, without lawful authority to do so; or

(c) takes irrigation water out of turn or in excess amount without lawful authority to do so and in violation of the right of any other person; or

(d) pollutes or befouls any water in any of the following ways:

i) constructs or maintains a corral, sheep pen, goat pen, stable, pig pen, chicken coop, or other offensive yard or outhouse where the waste or drainage therefrom shall flow directly into the waters of any stream, well, spring, or source of water used for domestic purposes; or

ii) deposits, piles, unloads or leaves any manure heap, rubbish, or the carcass of any dead animal where the waste or drainage therefrom will flow directly into the waters of any stream, well, spring or source of water used for domestic purposes; or

iii) constructs, establishes or maintains any corral, yard, vat, pond, camp, or bedding place for the shearing, dipping, washing, storing, herding, holding or keeping of livestock in such proximity to a stream, or other source of water used for domestic purposes or which flows through a city or town, so that the waste, refuse or filth, therefrom find their way into said source of water; or

iv) knowingly causes or allows any substance harmful or potentially harmful to human life to enter into a source of water used for domestic purposes.

(2) The presence of lawful authority need not be disproved by the prosecution but shall be presented as an affirmative defense.

(3) Waters offense is a Class B offense.

§13-4-142. Public Nuisance.

(1) A person is guilty of public nuisance if, without lawful authority to do so, he does any act or fails to perform any duty, which act or omission either:

(a) unreasonably annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons; or

(b) offends public decency; or

(c) unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, highway or road; or

(d) In any way unreasonably renders three or more persons insecure in life or the use of property.

(2) An act or omission to act which affects three or more persons in the ways specified in this Section is still a nuisance regardless that the extent of the annoyance or damage inflicted on the individuals is unequal.

(3) The presence of lawful authority need not be disproved by the prosecution but shall be presented as an affirmative defense.

(4) The commission by act or omission of a public nuisance shall not be punished under this section if the same conduct constitutes another offense which has also been charged against a defendant.

(5) Public nuisance is a Class C offense.

§13-4-143. Business Fraud.

(1) A person is guilty of business fraud if:

(a) he signs a fictitious name to a stock subscription or agreement to take or buy stock, or signs such a subscription or agreement with no good faith intent to comply with the terms thereof; or

(b) being an officer, director or managerial level employee, he knowingly exhibits a false, forged, or altered book, paper, voucher, security or other document relating to the business to any person with intent to deceive regarding any aspect of the business; or

(c) he subscribes the name of another to any document relating to the offer or sale of stock or securities in an existing or contemplated business without such other persons to believe that such person is an officer, agent, member or promoter of the business when he is, in fact, not; or

(d) being an officer, director or managerial level employee of a business, he knowingly causes or allows to be made a false or inaccurate entry in the books or accounts of the business, or purposely misapplies any of the funds of the business, or knowingly does or causes to be done any act not properly authorized by the business management or by law, or makes or concurs in the making of a false report, exhibit or statement of the condition or affairs of the business, or refuses to allow inspection of the business books and records by one having legal authority to do so.

(2) Business fraud is a Class C offense.

§13-4-144. Contributing to the Delinquency of a Minor.

(1) A person is guilty of contributing to the delinquency of a minor if:

(a) he knowingly or recklessly sells or gives to or otherwise makes beer, liquor, wine or other alcoholic beverages available to a person under the age of 21 years; or

(b) he shall knowingly or recklessly, by act or omission, encourage, cause or contribute to the delinquency of a minor under 18 years of age.

(2) Contributing to the delinquency of a minor is a Class B offense.

§13-4-145. Curfew Violation.

(1) A minor under the age of 18 is guilty of curfew violation if, unless accompanied by a parent or guardian, or unless in attendance at or returning directly home from an organized school, church or Tribal function, he is away from his

place of residence in a public place or a private place other than the place where he intends to spend the night with the permission of the owner of such place, or is in a vehicle driving about except as allowed above, after the hour of 11:00 p.m. local time.

(2) Curfew violation is a Class C offense.

§13-4-146. Fireworks Offense.

(1) A person is guilty of fireworks offense if he possesses, buys, sells, distributes, transports, activates, ignites, or detonates any firecracker or other firework type device which is capable of or intended to explode, ignite, become self propelled, give off any projectile, spark or other ignited or fused object or manifestation, or in any way give off sound or light by virtue of its burning or exploding.

(2) It shall not be an offense under this section:

(a) to use or ignite hand-held sparkler type devices in such a manner that they burn openly and singly or to use toy caps and cap guns singly and in the intended fashion; or

(b) to use or ignite fireworks at a patriotic, religious, or Tribal ceremony, gathering, or celebration in a safe manner provided that a permit to do so has been obtained from the Tribal Business Committee prior to the importation and use of such fireworks.

(3) Fireworks offense is a Class C offense.

§13-4-147. Littering.

(1) A person is guilty of littering if:

(a) he throws, dumps, places or deposits upon the lands of another or any Tribal or public property, or highway, street, road, or other area not his own, without the consent of the owner or other lawful permission, any garbage, debris, junk, carcasses, trash, refuse or other substances of any nature whatsoever which would mar the appearance or detract from the cleanliness of the area; or

(b) he stores, keeps or allows to accumulate any wrecked, junked, or unserviceable vehicles, appliances, or implements within the boundaries of a city, town, community or village, unless he has a permit from the Tribal Business Committee to maintain a junkyard.

(2) Littering is a Class C offense.

§13-4-148. Livestock Offense.

(1) A person is guilty of livestock offense if he:

(a) knowingly or recklessly refuses or fails to mark or brand his livestock when such is required in the interest of livestock identification or directed by Tribal or government officials; or

(b) alters, obliterates, or removes a brand or mark, or misbrands or mismarks livestock with a purpose to deceive another for any reason; or

(c) knowingly permits his livestock to graze or trespass on the property of another or of the Tribe without permission to do so or in excess of permitted time or amount; or

(d) knowingly refuses to sell, dispose, or otherwise remove sick or otherwise infectious livestock from common grazing areas or areas where there is a substantial danger of infecting other livestock; or

(e) knowingly fails to treat or dispose of a sick animal where there is a substantial danger of infecting other animals; or

(f) fails to dip, inoculate or otherwise treat livestock in the manner which the Tribal Business Committee or its designated representative shall direct; or

(g) makes a false report of livestock owned; or

(h) purposely obstructs or interferes with a livestock roundup.

(2) Except in cases in which the owner or person having custody of livestock believed to be in violation of this section cannot be found after reasonable search, no conviction shall be found for subsections a, c, d, e, or f set forth next above unless the owner or person having custody of the livestock involved is given 48 hours written notice of his alleged violation and he has not after such period of notice remedied the alleged violation.

(3) Livestock found to be in violation of this section may be impounded at the time an arrest is made, and may be impounded without prior notice to the owner if a court so orders upon receipt of evidence that such animals seriously threaten the property of the Tribe or another or the health of other livestock on the Reservation and that immediate action is necessary to protect such interests from serious harm. A reasonable fee for the care of such animals may be collected prior to their release.

(4) Livestock offense is a class C offense.

§13-4-149. Welfare Offense.

(1) A person is guilty of welfare offense if:

(a) he gives false information to another for the purpose of obtaining or retaining welfare benefits; or

(b) he knowingly fails to correct misinformation which enables him to obtain or retain welfare benefits; or

(c) he continues to accept and use for his own benefit or the benefit of another, welfare benefits to which he knows he is not entitled; or

(d) he uses or expends money or commodities granted him as a welfare benefit in an improper manner or in a manner which does not proportionately benefit each of those persons intended to benefit by the grant.

(e) he knowingly uses a welfare benefit in a manner contrary to the regulations relating thereto.

(2) Welfare offense is a Class C offense.

J. Gang Offenses

§13-4-150. Causing, Encouraging, Soliciting, or Recruiting Criminal Gang Membership.

(1) A person who intentionally causes, encourages, solicits, or recruits another person to join a criminal gang that requires as a condition of membership or continued membership the commission of any crime commits a Class B offense.

(2) Upon a second or subsequent offense, the person commits a Class A offense.

(3) "Criminal gang" means a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of two or more persons who have a common name or common name or common identifying signs, colors, or symbols and have two or more members how, individually or collectively, engage in or have engaged in a pattern of criminal gang activity.

(4) "Criminal gang member" is a person who is a member of a criminal gang as defined in subsection (3) and who meets two or more of the following criteria:

(a) Admits to criminal gang membership.

(b) Is identified as a criminal gang member by a parent or guardian.

(c) Is identified as a criminal gang member by a reliable informant.

(d) Resides in or frequents a particular criminal gang's area and adopts their style of dress, their use of hand signs, or their tattoos, and associates with known criminal gang members.

(e) Has been arrested in the company of identified criminal gang members for offenses which are consistent with usual criminal gang activity.

(f) Is identified as a criminal gang member by physical evidence such as photographs or other documentation.

(g) Has been stopped in the company of known criminal gang members two or more times.

(5) "Pattern of criminal gang activity" means the commission or attempted commission of, or solicitation or conspiracy to commit, one or more Class A offenses or two or more Class B or C offenses, or one Class A offense and one Class B or C offense, as defined in this Title, or the comparable number of delinquent acts or violations of law which would be offenses if committed by an adult, on separate occasions.

§13-4-151. Gang Loitering – Failure to Disperse.

(1) When a law enforcement officer observes a person whom the officer reasonably believes to be a criminal gang member engaging in gang loitering in the presence of one or more persons in any public place, the police officer shall:

(a) Inform all the persons that they are in a public place in which loitering by a group containing one or more criminal gang members is prohibited;

(b) Order all the persons in the group to disperse and remove themselves from within sight and hearing of the location where the officer issues the order to disperse; and

(c) Inform the persons that any person in the group will be subject to being charged with a criminal offense and will also be subject to arrest if the person fails to promptly obey the order to disperse.

(2) The officer shall also advise the persons the officer is directing to disperse that each of the persons directed to disperse is subject to being charged with a criminal offense and will also be subject to arrest if the person is again, within eight hours after the current order to disperse is made:

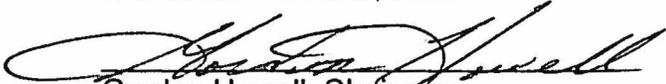
(a) Present in a public place with a group that includes one or more persons a peace officer reasonably believes to be a member of a criminal street gang; and

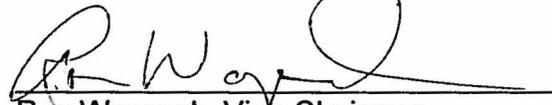
(b) Within sight or hearing of the location where the law enforcement officer is currently issuing the order to disperse.

§13-4-152. Parents and Guardians of Juveniles in Gang-Related Crimes Subject to Criminal Charges.

Any person who is the parent, legal guardian, or other adult charged with the control or supervision of any juvenile has an affirmative duty to assure that the juvenile subject to their supervision and control complies with Tribal, State and federal statutory and customary law. Any person who is the parent, legal guardian, or other adult charged with the control or supervision of any juvenile shall be deemed to be responsible for the criminal gang activities of the juvenile subject to their control or supervision, whether such activities are conducted through an affirmative act of that adult, or by omission, and the parent, guardian, or adult charged with the control or supervision of the juvenile shall

be subject to the penalties created by this Chapter as if the acts of the juvenile under their control or supervision had been the acts of that adult person.


Gordon Howell, Chairman


Ron Wopsock, Vice-Chairman


Bruce Ignacio, Member

Absent

Stewart Pike, Member


Phillip Chimburas, Member

Absent

Tony Small, Member

CERTIFICATION

I HEREBY CERTIFY THAT the above Ordinance was adopted by the Tribal Business Committee of the Ute Indian Tribe of the Uintah and Ouray Reservation pursuant to the Constitution and By-Laws of the Ute Indian Tribe of the Uintah and Ouray Reservation at a duly called meeting in Las Vegas, NV, on the 23 day of _____, 2013, at which time a quorum was present and votes:

_____ abstaining;
4 for; 0 against; 0 and 2 absent.



Secretary of the Tribal Business Committee
Ute Indian Tribe, Uintah & Ouray Reservation