

LAW & ORDER CODE
CHEYENNE RIVER
SIOUX TRIBE
1978 REVISION



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PREAMBLE

This Law and Order Code for the Cheyenne River Sioux Tribe of the Cheyenne River Sioux Indian Reservation is established for the purpose of strengthening Tribal self-government, providing for the judicial needs of the Reservation, and thereby assuring the maintenance of law and order on the Reservation.

TITLE I. GENERAL PROVISIONS

CHAPTER I. PRELIMINARY PROVISIONS

Sec. 1-1-1 Constitutional Authority.

This Law and Order Code is adopted pursuant to the authority vested in the Tribal Council under Article IV, Sec. K of the Constitution of the Cheyenne River Sioux Tribe.

Sec. 1-1-2 Name of Code.

This Law and Order Code shall be known as the Law and Order Code of the Cheyenne River Sioux Tribe and may be referred to as the Code, or Cheyenne River Code, and may be abbreviated as C.R.C.

Sec. 1-1-3 Prior Inconsistent Ordinances Repealed.

Any and all ordinances of the Tribal Council which conflict in any way with the provisions of this Law and Order Code are hereby repealed to the extent that they are inconsistent with or conflict with, or are contrary to the spirit and/or purpose of this Law and Order Code. All prior ordinances and resolutions of the Tribal Council dealing with the same subject matter as the titles of this Code are repealed as of the effective date of this Code.

Sec. 1-1-4 Amendment of Law and Order Code.

This Law and Order Code may be amended, additions made hereto, or deletions made herefrom in the manner provided for the adoption of Tribal Council ordinances. Amendments and additions to this Law and Order Code shall become a part thereof for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering and organization hereof.

CHAPTER II. ESTABLISHMENT OF COURTS; JUDGES AND OTHER COURT PERSONNEL

Sec. 1-2-1 Courts Established.

(1) There is hereby established a Cheyenne River Sioux Tribal Appellate Court, which may be referred to as the Appellate Court, to handle all appeals from the Tribal Court and Tribal Juvenile Court as provided elsewhere in this Law and Order Code. The Appellate Court shall consist of three justices.

(2) There is hereby established a Cheyenne River Sioux Tribal Court, which may be referred to as the Tribal Court, to handle all matters of a judicial nature not specifically placed within the jurisdiction of some other judicial forum. The Cheyenne River Sioux Tribal Court shall be a court of general, civil and criminal jurisdiction and shall hear appeals from decisions of the Tribal Council and all Tribal administrative bodies.

(3) There is hereby established a Cheyenne River Sioux Tribal Juvenile Court, which may be referred to as the Tribal Juvenile Court, to handle all matters as set forth in the Juvenile Code contained in this Law and Order Code.

Sec. 1-2-2 Judges.

(1) There shall be appointed:

- (a) Three Appellate Court Judges for the Appellate Court;
- (b) One Chief Judge and as many associate Judges as the Cheyenne River Sioux Tribal Council sees fit for the Tribal Court; and
- (c) One Juvenile Court Judge and as many associate Judges as the Cheyenne River Sioux Tribal Council may see fit for the Juvenile Court.

(2) The appointment, qualifications, terms of office, and compensation to be received by such judges shall be determined by the Tribal Council, provided, however, that a judge once appointed shall not have his compensation decreased during his term of office, and provided further that no judge shall be suspended or removed from office prior to the expiration of his term, except as provided hereinafter.

(3) Judges may be appointed to successive terms of office.

Sec. 1-2-3 Removal of Judges.

Any judge may be removed from office prior to the expiration of his term of office by the majority vote of the Tribal Council only upon the grounds of neglect of duty or gross misconduct, and only after the holding of a public hearing at which the judge, after being given not less than five days notice, is given an opportunity to answer all charges and present evidence in his own defense.

Sec. 1-2-4 Powers and Duties of Judges.

(1) Judges shall administer justice and discharge all duties imposed upon them by law and shall hear and decide matters of a judicial nature and enter judgments and orders disposing of such matters. In the absence of the Court Clerk, a Judge may perform the clerk's duties in addition to his own and may receive cash bail or bonds whenever a clerk or other authorized person is not available.

(2) The Chief Judge shall be responsible for the administration of all courts, except the Tribal Juvenile Court which shall be administered by the Juvenile Court Judge, and shall supervise all probation and parole officers. In addition, the Chief Judge shall be responsible for the assignment of cases and the management of the Court's calendar and business. The Chief Judge shall designate an Associate Judge to act as Chief Judge in his absence.

(3) All judges of the Courts of the Cheyenne River Sioux Tribe shall conform their conduct to the Code of Judicial Conduct as adopted by the American Bar Association.

(4) Every judicial officer has power to:

- (a) preserve and enforce order in his immediate presence, and in proceedings before him, when he is engaged in the performance of his official duty;
- (b) compel obedience to his lawful orders;
- (c) compel the attendance of persons to testify in a proceeding before him as provided by law;
- (d) administer oaths to persons in proceedings before him and in any other case where such shall be necessary in the exercise of his powers and duties;
- (e) punish for contempt to assure the effectual exercise of these powers.

Sec. 1-2-5 Disqualification of Judges.

(1) A Judge shall disqualify himself from hearing any matter in which he has a direct interest or in which any party to the matter is a relative by blood, in the fourth degree (first cousins), or where he feels that he will not be able to render a just decision.

(2) Any party to a legal proceeding may request a change of assignment of judges to hear the proceeding by filing a written Affidavit of Prejudice giving sufficient, reasonable grounds why the judge assigned should not hear the case. Such affidavit shall be presented to the Judge assigned to hear the case who shall rule on the sufficiency of the affidavit, and, if sufficient, either disqualify himself or turn the affidavit over to the Chief Judge or some other judge for a decision as to whether a different Judge should be assigned.

Sec. 1-2-6 Oath of Office of Judge.

(1) Every Judge, prior to taking office or acting in such office, shall take the following oath or affirmation:

I, _____, do solemnly swear (affirm) that I will support and defend the laws and the constitution of the United States; that I will support, defend, and uphold the Constitution, By-laws and Treaties of the Cheyenne River Sioux Tribe; that I will support, uphold and enforce the Law and Order Code of the Cheyenne River Sioux Tribe, and that I will faithfully and impartially discharge the duties of my office to the best of my ability.

(2) Said oath may be administered by a member of the Tribal Council or a Judge of the Court.

Sec. 1-2-7 Clerks of Courts.

(1) There shall be a clerk of the Tribal Juvenile Court and two clerks of the Tribal Court, one of whom shall be designated by the Chief Judge as the Clerk of the Tribal Appellate Court. Additional assistant clerks may be appointed by the Tribal Council if such is deemed necessary.

(2) The appointment, qualifications, terms of office and compensation of clerks shall be determined by the Tribal Council.

Sec. 1-2-8 Duties of Clerks.

It shall be the duty of the Clerks of the Tribal Courts to supervise and keep all records, files, dockets or other records required to be kept by this Code, by rule of the Court, Tribal resolution or as otherwise established, and further to keep a written record of all proceedings of the Court, to administer oaths, to collect and account for all fines, bail or bond money, fees or other charges which cause money to come to the Court, to deposit and account for all such moneys in the manner prescribed by the Tribal Council, and to disburse such money as authorized by law. The Clerks shall further assist the Court in any way required to facilitate the performance of its duties, to aid the police or private citizens in their dealings with the Court, and may render advice and assistance to individual members of the Tribe or their counsel in the drafting of documents incidental to proceedings in the Courts.

Sec. 1-2-9 Oath of Clerks.

(1) Every Clerk shall take the following oath upon assuming office:

I, _____, having been appointed Clerk of the Cheyenne River Sioux Tribal (Juvenile) Court, do solemnly swear (affirm) that I will truly, faithfully, honestly, and impartially discharge all of the duties of my office to the best of my ability and understanding.

(2) Such oath shall be administered by a Judge of the Tribal Court.

Sec. 1-2-10 Court Administrator.

The Tribal Council may, at such time as it appears reasonably necessary for the efficient functioning of the Court, appoint a Court Administrator whose job it will be to aid the Chief Judge in administering the courts, the scheduling of cases and processing of papers for scheduled cases, and do such other things as the Tribal Council or Chief Judge directs to assure the orderly and efficient operation of all Tribal Courts.

Sec. 1-2-11 Probation and Parole Officers.

(1) The Tribal Council shall appoint one or more persons to be Probation and Parole Officers and shall determine the qualifications, terms of employment and compensation of such officers.

(2) Probation and Parole Officers, subject to the supervision of the Chief Judge, shall have the responsibility of assuring the faithful performance of probation or parole agreements by persons subject thereto, counseling such persons and their families, preparing presentence or other reports as requested by a Tribal Judge, and doing such other things as may be directed by a Tribal Judge or otherwise required by law.

(3) A Probation and Parole Officer shall have the authority of a police officer to make arrests for violation of probation or parole agreements.

Sec. 1-2-12 Bonding of Court Personnel.

(4) All Judges and Clerks shall be bonded, at Tribal expense, in amounts determined by the Tribal Council, to secure the honest performance of their duties.

CHAPTER III. CONTEMPTS

Sec. 1-3-1 Acts or Failure to Act Which Constitute contempt of Court.

The following acts or failures to act may serve as the basis for finding an individual or other entity in contempt of court:

(1) Disorderly, contemptuous, or insulting behavior toward a Judge while holding Court, which tends to interrupt the course of the proceedings or undermine the dignity of the Court.

(2) A breach of the peace, or loud boisterous conduct which tends to interrupt the course of a judicial proceeding.

(3) Deceit, or abuse of process or proceedings of the Court by a party or counselor to a judicial proceeding.

(4) Disobedience to a lawful judgment, order or process of the Court.

(5) Assuming to be an officer, spokesman or other official of the Court and acting as such without authority.

(6) Rescuing or taking any person or property from the Court or an officer acting under Court order, contrary to the order of the Court.

(7) Unlawfully detaining or otherwise interfering with a witness or party to an action while such person is going to or from a Court proceeding or attending Court.

(8) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

(9) Any other interference with the process, proceeding, or dignity of the Court or a Judge of the Court while in the performance of his official duties.

Sec. 1-3-2 Civil Contempt.

(1) A civil contempt is prosecuted to preserve, protect, enforce or restore the duly adjudicated rights of a party to a civil action against one under legal obligation to do or refrain from doing something as a result of a judicial decree or order.

(2) Relief in a civil contempt proceeding may be coercive or compensatory in nature as to the complaining party and may include a fine payable to the Court or to the complaining party or imprisonment of the party in contempt to secure compliance, or both.

Sec. 1-3-3 Criminal Contempt.

(1) Conduct which is directed at, or is detrimental to, the dignity and authority of the Court is a criminal contempt.

(2) Criminal contempt is an offense which may be punishable, at the discretion of the Court based on the nature of the conduct in question, with a fine of up to \$500.00 and/or up to six (6) months in jail.

Sec. 1-3-4 Contempt Procedure.

(1) A direct contempt is one committed in the presence of the Court or so near thereto as to be disruptive of the Court proceedings, and such may be adjudged and punished summarily.

(2) All other contempts shall be determined at a hearing at which the person accused of contempt is given notice and an opportunity to be heard.

CHAPTER IV. JURISDICTION

Sec. 1-4-1 Jurisdiction - Tribal Policy.

It is hereby declared as a matter of Tribal policy, that the public interest and the interests of the Cheyenne River Sioux Tribe demand that the Tribe provide itself, its members, and other persons living within the territorial jurisdiction of the Tribe as set forth in Section 4 of the Act of March 2, 1889, (48 Stat. 888) with an effective means of redress in both civil and criminal cases against

members and non-Tribal members who through either their residence, presence, business dealings, other actions or failures to act, or other significant minimum contacts with this Reservation and/or its residents commit criminal offenses against the Tribe or incur civil obligations to persons or entities entitled to the Tribes protection. This action is deemed necessary as a result of the confusion and conflicts caused by the increased contact and interaction between the Tribe, its members, and other residents of the Reservation and other persons and entities over which the Tribe has not previously elected to exercise jurisdiction. The jurisdictional provisions of this Code, to insure maximum protection for the Tribe, its members and other residents of the Reservation, should be applied equally to all persons, members and non-members alike.

Sec. 1-4-2 Territorial Jurisdiction.

(1) The Jurisdiction of the Courts of the Cheyenne River Sioux Tribe shall extend to the territory within the exterior boundaries as set forth in Section 4 of the Act of March 2, 1889 (48 Stat. 888) and to such other lands without such boundaries as may hereafter be added to the Reservation or held in Trust for the Tribe under any law of the United States or otherwise.

Sec. 1-4-3 Personal Jurisdiction.

(1) As used in these jurisdictional provisions, the word "person" shall include any individual, firm, company, association, or corporation.

(2) Subject to any contrary provisions, exceptions or limitations contained in either federal law, the Tribal Constitution, or as expressly stated elsewhere in this Code, the Courts of the Cheyenne River Sioux Tribe shall have civil and criminal jurisdiction over the following persons:

A. Any person residing, located or present within the Reservation for:

1. Any civil cause of action; or
2. Any charge of criminal offense prohibited by this Code or other ordinance of the Tribe when the offense is alleged to have occurred within the Reservation.

B. Any person who transacts, conducts, or performs any business or activity within the Reservation, either in person or by an agent or representative, for any civil cause of action or charge of criminal offense for any act expressly

prohibited by this Code or other ordinance of the Tribe arising from such business or activity.

C. Any person who owns, uses or possesses any property within the Reservation, for any civil cause of action or charge of criminal offense prohibited by this Code or other ordinance of the Tribe arising from such ownership, use or possession.

D. Any person who commits a tortious act or engages in tortious conduct within the Reservation, either in person or by an agent or representative, for any civil cause of action arising from such act or conduct.

E. Any person who commits a criminal offense prohibited by this Code or other ordinance of the Tribe, by his own conduct or the conduct of another for which he is legally accountable, if:

1. The conduct occurs either wholly or partly within the Reservation; or
2. The conduct which occurs outside the Reservation constitutes an attempt, solicitation, or conspiracy to commit an offense within the Reservation, and an act in furtherance of the attempt or conspiracy occurs within the Reservation; or
3. The conduct which occurs within the Reservation constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense prohibited by this Code or ordinances of the Tribe and such other jurisdiction.

(3) None of the foregoing bases of jurisdiction is exclusive, and jurisdiction over a person may be established upon any one or more of them as applicable.

Sec. 1-4-4 Jurisdiction Over Property.

Subject to any contrary provisions, exceptions, or limitations contained in either federal laws and regulations, the Tribal Constitution, or as expressly stated elsewhere in this Code, the Courts of the Cheyenne River Sioux Tribe shall have jurisdiction over any real or personal property located on the Reservation to determine the ownership thereof or rights therein or to determine the application of such property to the satisfaction of a claim for which the owner of the property may be liable.

Sec. 1-4-5 General Subject Matter Jurisdiction - Limitations.

Subject to any contrary provisions, exceptions, or limitations contained in federal law, or the Tribal Constitution, the Courts of the Cheyenne River Sioux Tribe shall have jurisdiction over all civil causes of action, and over all offenses prohibited by this Code except the Courts of the Cheyenne River Sioux Tribe shall not assume jurisdiction over any civil or criminal matter which does not involve either the Tribe, its officers, agents, employees, property or enterprises, or a member of the Tribe, or a member of a federally recognized tribe, if some other forum exists for the handling of the matter and if the matter is not one in which the rights of the Tribe or its members may be directly or indirectly affected.

Sec. 1-4-6 Concurrent Jurisdiction.

The jurisdiction involved by this Code over any person, cause of action, or subject shall be concurrent with any valid jurisdiction over the same of the courts of the United States, any state, or any political subdivision thereof; provided, however, this Code does not recognize, grant, or cede jurisdiction to any political or governmental entity in which jurisdiction does not otherwise exist in law.

Sec. 1-4-7 Exclusive Original Jurisdiction.

(1) The Courts of the Cheyenne River Sioux Tribe shall have exclusive original jurisdiction in all matters in which the Cheyenne River Sioux Tribe or its officers or employees are parties in their official capacities.

(2) Nothing contained in the preceding paragraph or elsewhere in this Code shall be construed as a waiver of the sovereign immunity of the Tribe or its officers or enterprises unless specifically denominated as such.

CHAPTER V. COUNSELORS AND PROFESSIONAL ATTORNEYS

Sec. 1-5-1 Lay Counsel.

(1) Any person appearing as a party in any judicial proceeding before a Court of the Cheyenne River Sioux Tribe shall have the right to be represented by a lay counselor (not a professional attorney) and to have such person assist in the preparation and presentation of his case.

(2) The Cheyenne River Sioux Tribe shall have no obligation to provide or pay for such lay counselors and such

obligation shall rest entirely with the person desiring such a counselor.

(3) Any person appearing as a lay counselor shall be subject to the same ethical obligations of honesty and confidentiality towards his client and the Court as would a professional attorney, and the attorney-client testimonial privilege shall apply in appropriate circumstances.

(4) Lay counselors shall be deemed officers of the Court for purposes of their representation of a party and shall be subject to the disciplinary authority of the Court in all matters relating to their representative capacity.

Sec. 1-5-2 Right to be Represented by a Professional Attorney.

Any person appearing as a party in any civil or criminal action shall have the right to be represented by a professional attorney of his own choice and at his own expense; provided, however, that the Cheyenne River Sioux Tribe has no obligation to provide or pay for such an attorney; provided further, that any such attorney appearing before the Courts of the Cheyenne River Sioux Tribe shall have first obtained admission to practice before such Courts in accordance with the procedures set forth herein.

Sec. 1-5-3 Eligibility for Admission.

Any attorney who is an active member in good standing of the South Dakota State Bar, or any attorney certified and eligible to practice before the highest court of any other state or of the Supreme Court of the United States is eligible to be admitted to practice before the Courts of the Cheyenne River Sioux Tribe.

Sec. 1-5-4 Procedure for Admission.

(1) Any professional attorney desiring to be admitted to practice before the courts of the Cheyenne River Sioux Tribe shall apply for admission by certifying under oath, either verbally or in writing to the following:

(a) That he is an active member in good standing of the South Dakota State Bar or is certified and eligible to practice before the highest court of any other state or of the Supreme Court of the United States.

(b) That if admitted to practice before the courts of the Cheyenne River Sioux Tribe he will take the required oath as prescribed in the Law and Order Code for Attorneys and be bound thereby.

(c) That if admitted to practice he will accept and represent indigent clients without compensation or without full compensation when asked by a Judge of the Court to do so.

(2) An Admission Fee of \$75.00 shall be tendered with the application, subject to return if the application is denied. The fee shall be waived for attorneys employed by the Tribe and for others upon tribal council resolution.

(3) Upon receipt of an application for admission to practice before the Courts of the Cheyenne River Sioux Tribe, the Chief Judge shall review the application and may, but need not, investigate into the truth of the matters contained therein. If satisfied that the applicant meets the qualifications set forth herein, the Chief Judge shall notify such person who may then appear in person to take the oath prescribed herein or may subscribe his signature to such oath and forward it to the Chief Judge.

(4) Upon the taking of the oath, either orally or in writing, the Chief Judge shall cause a certificate to be issued evidencing the admission of the attorney to practice before the Courts of the Cheyenne River Sioux Tribe.

(5) Any person denied admission shall have a right to appeal and have a due process hearing before the Council.

Sec. 1-5-5 Disbarment and Discipline.

(1) Whenever it is made to appear to the Chief Judge that any attorney admitted to practice before the Courts of the Cheyenne River Sioux Tribe has been disbarred or suspended from the practice of law in the State of South Dakota or other state to which reference for admission to practice was made as a condition to obtaining admission to practice before the Tribal Courts, he shall immediately be given notice at his last known address that he shall be suspended from practice before the Courts of the Cheyenne River Sioux Tribe for an indefinite period unless he appears within five (5) days and shows good cause why such order should not be made.

(2) Any judge who finds an attorney admitted to practice before the Courts of the Cheyenne River Sioux Tribe to be in contempt of Court may, in addition to any other sanction imposed, order the attorney to appear within ten (10) days and show cause why he should not be suspended from practicing before the Courts of the Cheyenne River Sioux Tribe.

(3) The Chief Judge may, upon receiving a written, verified complaint which indicates that an attorney admitted to practice before the Courts of the Cheyenne River Sioux Tribe has acted in an unethical or otherwise improper manner while functioning as an attorney, order such attorney to appear and defend himself at a hearing to hear all evidence relevant to the matter, and may order the suspension of such an attorney if such appears reasonably necessary or appropriate. If the Chief Judge is the complainant, another trial judge shall hear and decide the matter.

(4) All suspensions from practicing before the Courts of the Cheyenne River Sioux Tribe shall be for an indefinite period unless the Judge specifically orders otherwise. An attorney suspended for an indefinite period, or one suspended for a specific period, may petition the Tribal Court for permission to re-apply for permission to practice at the end of one year or the specific period of suspension, and such permission shall be granted if it is made to appear, at a hearing or otherwise as the Court shall direct that he has been adequately reproved and now appears willing to conduct himself in a proper manner, and that the petitioner has been reinstated to practice if previously disbarred or suspended in another jurisdiction.

(5) Any person appearing as lay counsel for another may be suspended from further appearances as such for misconduct or improper behavior by any Judge upon the same conditions of notice and hearing provided professional attorneys.

Sec. 1-5-6 Standards of Conduct and Obligations for Attorneys and Lay Counsel.

(1) Every attorney admitted to practice before the Courts of the Cheyenne River Sioux Tribe, and every lay counsel employed or appointed to represent another before such courts when acting in such capacity or in matters in any relation thereto shall conform his conduct in every

respect to the requirements and suggested behavior of the Code of Professional Responsibility as adopted by the American Bar Association.

(2) Both professional attorneys and lay counselors who hold themselves out as being available to act as such have a responsibility to accept as clients and represent without compensation or without full compensation, such persons as a Judge of a Tribal Court feels have particularly urgent needs for such representation but are personally unable to afford to pay for such legal help.

Sec. 1-5-7 Oath of Attorneys and Counselors.

(1) Upon admission to practice as provided herein, an attorney shall take the following oath, either verbally before the Court, or subscribe his signature to such oath if admitted without personally appearing:

I do solemnly swear (affirm);
That I will support the Constitution and laws of the United States and support and defend the Constitution and By-laws, Law and Order Code and all resolutions and ordinances of the Cheyenne River Sioux Tribe;
That I will maintain the respect due the Courts and Judicial officers of the Cheyenne River Sioux Tribe;
That I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;
That I will employ for such purposes of maintaining the cause confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement or fact or law;
That I will maintain the confidences and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;
That I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required in justice by the cause with which I am associated;
That I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed or delay any man's cause for lucre or malice. SO HELP ME GOD.

(2) a lay counselor hired, retained or appointed to represent another before any Court of the Cheyenne River Sioux Tribe, shall take the foregoing oath at the time of his first appearance in Court.

Sec. 1-5-8 Non-Resident Attorneys .

Any tribal Judge may waive the formal admission procedure and payment of the fee as required herein in the case of an attorney, not a resident of the State of South Dakota, making an appearance for the limited purpose of a single, specific case, and if such attorney is associated in such case with an attorney or counselor who is formally admitted to practice before the Courts of the Cheyenne River Sioux Tribe or upon stipulation of the Tribal Prosecutor in a criminal proceeding.

CHAPTER VI. JURORS

Sec. 1-6-1 Eligibility for Jury Duty.

(1) Any enrolled member of the Cheyenne River Sioux Tribe, between the ages of 21 and 70, who has not been convicted of a felony or a Class A offense under this Code, and who resides on the Cheyenne River Sioux Indian Reservation, shall be eligible to be a juror. Judges, other officers or employees of the Court, attorneys and lay counselors shall not be eligible to be jurors.

(2) The Chief Judge may by rule adopt procedures whereby non-enrolled Indians and non-Indians may be summoned for jury duty in cases in which one or more non-Indian parties are involved.

Sec. 1-6-2 Jury Lists.

Each year, the Tribal Council, or the Clerk of Courts, at the direction of the Tribal Council, shall prepare a list of eligible jurors, which list shall contain not less than fifty (50) names and which shall contain the names of persons from each community and Reservation district, prorated as nearly as possible according to the relative population of the communities and districts.

Sec. 1-6-3 Jury Trials.

(1) The Clerk shall subpoena not less than twenty (20) persons from the list of eligible jurors to appear and be available to serve as jurors whenever a jury trial is scheduled in a civil or criminal matter.

(2) The selection from the list of eligible jurors shall be by lot or some other means of random, impartial selection.

(3) Selection of jurors to hear the case shall be accomplished as provided in the Rules of Civil and Criminal Procedure elsewhere in this Code.

Sec. 1-6-4 Power to Excuse Jurors.

Only the Judge assigned to hear a case shall have the power to excuse a person subpoenaed to appear as a juror and may do so on account of sickness, disability, extreme hardship or other good cause shown upon the request for such excusal by the person subpoenaed.

Sec. 1-6-5 Compensation of Jurors.

Each juror who is called and reports for jury duty or who serves on a jury shall be entitled to receive such fees for daily service and/or mileage, if any, as the Tribal Council shall establish by resolution, or as established by a rule of the Court.

CHAPTER VII. SUBPOENAS AND SERVICE OF OTHER PAPERS

Sec. 1-7-1 Issuance of Subpoenas.

(1) The Clerk shall issue subpoenas to compel the attendance of witnesses, jurors or such other persons as a judge may direct for a trial, hearing or other proceeding before a Court of the Cheyenne River Sioux Tribe.

(2) In a criminal case, the complaining witness and all witnesses for the Cheyenne River Sioux Tribe may be subpoenaed to appear at the date and time set for trial or a reasonable time before such time, and the defendant shall have the right to have witnesses subpoenaed to appear in his behalf by notifying the Clerk of Court of the names and addresses of such witnesses not less than ten (10) days prior to the scheduled trial date.

Sec. 1-7-2 Services of Subpoenas; Return of Service.

(1) Subpoenas in criminal cases shall be served by a tribal policeman, or other person designated by the Chief Judge, Chief of Police or Tribal Council.

(2) Subpoenas in non-criminal cases may also be served by any tribal member over 18 years of age, not a party to the action; who is a resident of the reservation.

(3) Except by order of the Court based upon good cause shown, no subpoena shall be served between the hours of 9:00 p.m. and 7:00 a.m. or on Sundays or legal holidays.

(4) The person serving a subpoena shall endorse upon the copy served his name, title, and the place, date, and time of service.

(5) The person serving a subpoena shall make a return to the Clerk stating the name of the case, the name of the person served, the place, date, and time of service and shall subscribe his name thereto under penalty or perjury for the intentional making of a false return.

CHAPTER VIII. GENERAL PROVISIONS

Sec. 1-8-1 Signature Defined.

The term "signature" or any term relating thereto as used in this Law and Order Code or subsequent resolutions or ordinances of the Tribal Council shall mean the written signature or mark or thumbprint of any individual witnessed by two disinterested persons subscribing their names therewith, or made before one authorized to administer oaths.

Sec. 1-8-2 Records of Court Open to Public Inspection; Exceptions.

The files and records of the Courts of the Cheyenne River Sioux Tribe shall be open for public inspection, except that the files and records of adoptions, incompetency proceedings, and Tribal Juvenile Court proceedings shall not be open to public inspection and may be inspected only with prior specific judicial authorization.

Sec. 1-8-3 Adoption by Reference Not a Waiver of Sovereign Power of the Cheyenne River Sioux Tribe.

The adoption of any law, code or other document by reference into this Code shall in no way constitute a waiver or cession of any sovereign power of the Cheyenne River Sioux Tribe to the jurisdiction whose law or code is adopted or in any way diminish such sovereign power, but shall result in the law or code thus adopted becoming the law of the Cheyenne River Sioux Tribe.

Sec. 1-8-4 Sovereign Immunity.

Except as required by federal law, or the Constitution and By-Laws of the Cheyenne River Sioux Tribe, or specifically waived by a resolution or ordinance of the Tribal Council specifically referring to such, the Cheyenne River Sioux Tribe shall be immune from suit in any civil action, and its officers and employees immune from suit for any liability arising from the performance of their official duties.

Sec. 1-8-5 Actions by or Against Tribe or Its Officers or Employees.

In any action otherwise authorized by or against the Tribe or its officers or employees arising from the performance of their official duties, the following modifications to the rules and procedures set forth in this Code shall apply:

(1) The periods of time specified for civil cases or appeals of either a civil or criminal nature in which an answer, reply or other pleading or response of any kind shall be required shall be double the period specified.

(2) Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be liable for the payment of the costs or expenses of the opposing party.

(3) Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be required to post security by bond or otherwise for any purpose.

Sec. 1-8-6 Limitations in Civil Actions.

Unless otherwise specifically provided in this Code, the following limitations on the bringing of civil actions will apply:

(1) Any action against the Tribe or its officers or employees arising from the performance of their official duties must be commenced within one year of the date the cause of action accrued.

(2) Any other action must be commenced within three years of the date of the cause of action accrued, provided, however, that any cause of action based on fraud or mistake shall not be deemed to have accrued until the aggrieved party has discovered the facts constituting the fraud or mistake.

Sec. 1-8-7 Principles of Construction.

The following principles of construction will apply to this Code unless a different construction is obviously intended:

(1) Masculine words shall include the feminine, and singular words shall include the plural, and vice versa.

(2) Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.

(3) Whenever a term is defined for a specific part of this Code, that definition shall apply to all parts of the Code unless a contrary meaning is clearly intended.

(4) This Code shall be construed as a whole to give effect to all its parts in a logical and consistent manner.

(5) If any provision of this Code or the application of any provision to any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby and to this end the provisions of this Code are declared to be severable.

(6) Any typographical errors or omissions shall be ignored whenever the intending meaning of the provision containing the error or omission is otherwise reasonably certain to the Court.

(7) Any other issues of construction shall be handled in accordance with generally accepted principles of construction giving due regard for the underlying principles and purposes of this Code.

Sec. 1-8-8 Definitions.

The following definitions will apply for the purposes of this Code:

(1) "Indian" or "Indian Person" shall include any person of Indian descent who is a member of any federally recognized Tribe.

(2) "Member" shall include a person whose name appears on the Membership Role of the Cheyenne River Sioux Tribe.

(3) "Reservation" shall include all lands within the exterior boundaries of the Cheyenne River Sioux Indian Reservation as set out in Section 4 of the Act of March 2, 1889 (48 Stat. 888).

(4) "Tribe" shall mean the Cheyenne River Sioux Tribe unless another or specific Indian Tribe is clearly intended.

(5) "Tribal Council" shall mean the Cheyenne River Sioux Tribal Council.

(6) "Superintendent" shall mean the Superintendent of the Bureau of Indian Affairs, Cheyenne River Sioux Tribal Agency, Eagle Butte, South Dakota.

(7) "Age of Majority" shall mean 18 years of age unless otherwise provided in this Law and Order Code or Tribal Constitution and By-laws.

TITLE II

CHEYENNE RIVER SIOUX TRIBAL RULES OF CRIMINAL PROCEDURE

I. SCOPE, PURPOSE AND CONSTRUCTION

Rule 1. Scope Purpose and Construction.

(a) These rules govern the procedure in all criminal proceedings in the Cheyenne River Sioux Tribal Court and all preliminary or supplementary procedures as specified herein.

(b) Every proceeding in which a person is charged with an offense of any degree is a criminal proceeding.

(c) These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

II. PRELIMINARY PROVISIONS

Rule 2. Prosecution of Offenses.

(a) No person shall be punished for an offense except upon a legal conviction, including a plea or admission of guilt in open court, by a court of competent jurisdiction, provided, however, that no incarceration or other disposition of one accused of an offense before trial in accordance with these rules shall be deemed a punishment.

(b) All criminal proceedings shall be prosecuted in the name of the Cheyenne River Sioux Tribe, Plaintiff, against the person charged with an offense, referred to as the Defendant.

Rule 3. Rights of Defendant.

In all criminal proceedings, the Defendant shall have the following rights:

(a) To appear and defend in person and by counsel, except:

No Defendant shall have the right to have appointed professional counsel provided at the Tribes' expense.

(b) To be informed of the nature of the charges against him and to have a copy thereof;

(c) To testify in his own behalf, or to refuse to testify regarding the charge against him, provided, however, that once a defendant takes the stand to testify on any matter relevant to the immediate proceeding against him, he shall be deemed to have waived all right to refuse to testify in that criminal proceeding;

(d) To confront and cross examine all witnesses against him, subject to the Rules of Evidence;

(e) To compel by subpoena the attendance of witnesses in his own behalf;

(f) To have a speedy public trial by an impartial judge or jury as provided in these rules;

(g) To appeal in all cases;

(h) To prevent his present spouse from testifying against him, except:

(1) in any case in which the offense charged is alleged to have been committed against the spouse or the children of either the spouse or the defendant, or against the marital relationship;

(2) any testimony by the spouse in the defendants' behalf will be deemed a waiver of this privilege.

(i) Not to be twice put in jeopardy by the Cheyenne River Sioux Tribal Court for the same offense.

Rule 4. Statute of Limitations.

(a) Except as provided in (b) below, a complaint shall be filed following the commission of an offense within the period specified:

Class A offenses - 5 years;
Class B offenses - 2 years;
Class C offenses - 1 year;

(b) The period of limitations shall commence upon the commission of the offense and shall not run during any period in which the defendant is not physically located on the Reservation.

Rule 5. The Complaint.

(a) The complaint is a written statement of the essential facts constituting the offense charged.

(b) All complaints shall be made upon oath before a judge of the Cheyenne River Sioux Tribal Court.

(c) The complaint must state:

(1) The name of the person accused, if known, or some other name if not known plus whatever description of the person accused is known;

(2) The general location where the offense was committed;

(3) The general name and code designation of the offense;

(4) A short, concise statement of the specific acts or omissions to act complained of;

(5) The person against whom or against whose property the offense was committed, if known, otherwise no statement need be made;

(6) The date and approximate time of the commission of the offense, if known;

(7) The name of the person filing the complaint.

No minor omission from or error in the form of the complaint shall be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown to result therefrom.

(d) It shall not be necessary to charge a specific class (Class A, B, or C) of an offense which depends for the degree of punishment upon factual finding (e.g. the value of the property taken in a theft offense). If a factual allegation is made which will supply the information needed to determine the degree of the offense, such allegation shall be considered as true for all preliminary matters (e.g. setting bail). If no such factual allegation is made, the offense shall be considered, for all preliminary matters, to be of the least degree possible under the facts alleged.

(e) The judge issuing the complaint shall examine such complainant under oath to ascertain his knowledge as to the facts alleged in the complaint and determine if probable cause exists to issue such complaint.

(f) If it appears from the complaint and the examination of the complainant that probable cause exists to believe that an offense has been committed, the judge will issue the complaint by affixing his signature thereto.

Rule 6. Arrest - Warrant or Summons.

(a) Upon the issuance of the complaint, a warrant of arrest or a summons shall issue to bring the defendant in the complaint before a judge of the Cheyenne River Sioux Tribal Court.

(b) Whenever it is provided that a warrant may issue for the arrest of a person charged with a commission of a Class B or C offense, the judge shall issue, or cause to be issued, a summons instead of a warrant, unless he has reasonable ground to believe that the person will not appear upon a summons, in which case he shall issue a warrant of arrest. A warrant of arrest shall issue in all cases in which a Class A offense is charged.

(c) The warrant of arrest shall be signed by the judge issuing such and shall contain the name of the defendant, or, if such is not known, some other name plus a reasonable description of the defendant, if known. It shall describe the offense charged and it shall command that the defendant be arrested and brought before the judge to enter a plea.

(d) When a summons shall issue, it shall name the defendant, the offense charged, and order the defendant to appear before a Tribal Judge within (5) days from time of service to enter a plea to the charge. If a defendant fails to appear in response to the summons, a warrant of arrest shall issue.

(e) Warrants and summonses shall be served by any Tribal police officer or any other adult person designated to perform such function by a judge or the Court or the Chief of Police.

(1) Such service may be accomplished any place within the exterior boundaries of the Cheyenne River Sioux Indian Reservation as set out in Section 4 of the Act of March 2, 1869 (48 Stat. 888).

(2) The date, time, and place of service or arrest shall be endorsed on the warrant or summons along with the name of the person serving such which shall be returned to the Court, and a copy of which, so endorsed, shall be left with the person served.

(3) An officer need not have the warrant in his possession at the time of arrest; but, if he does not, he shall inform the defendant that a warrant has been issued, the nature of the charge, and shall provide the defendant with a copy of the arrest warrant and complaint not later than at the time of arraignment.

(4) If reasonably possible, a properly endorsed copy of the summons or warrant plus a copy of the complaint shall be given to the defendant at the time of service or arrest.

(f) Should a defendant refuse service of a summons or should a defendants' whereabouts be unknown after a reasonable search, an arrest warrant shall issue.

Rule 7. Arraignment.

(a) As soon as reasonably possible after arrest but not more than 36 hours thereafter, or within the period designated on the summons, the defendant shall appear to be brought before a Tribal judge, and the defendant shall be informed of his right to counsel and of his right to bail.

If defendant desires but does not presently have counsel, he will be given a reasonable time to secure such before entering his plea.

(b) The defendant shall be provided with a copy of the complaint if he has not before received one.

(c) At the time of the arraignment, the complaint will be read to the defendant, and the defendant will be asked to enter a plea.

(d) The defendant will enter his plea or the Court will enter one for him, and he will then be advised regarding sentencing or bail as is appropriate.

Rule 8. Commitments.

(a) No person may be detained or jailed under this Law and Order Code for a longer period than 36 hours unless there has been issued a commitment bearing the signature of a judge of the Cheyenne River Sioux Tribal Court.

(b) Pending investigation of charges or pending trial, a temporary commitment shall be issued.

(c) A final commitment shall be issued for persons jailed as a result of a sentence of the Cheyenne River Sioux Tribal Court.

Rule 9. Joinder of Offenses and of Defendants.

(a) Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same act or transaction constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of such defendants need not be charged on each count.

Rule 10. Pleas.

(a) A defendant may plead guilty or not guilty. The Court shall not accept a plea of guilty without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If the defendant refuses to plead or if the Court refuses to accept a plea of guilty, the Court shall enter a plea of not guilty. The Court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a

factual basis for the plea.

(b) The defendant, with the consent of the Court and of the prosecuting attorney, may plead guilty to any lesser offense than that charged which is included in the offenses charged in the complaint or to any lesser degree of the offense charged.

Rule 11. Pleadings and Motions Before Trial; Defenses and Objections.

(a) Pleadings in criminal proceedings shall consist of the complaint and the plea of either guilty or not guilty. All other pleas and motions shall be made in accordance with these rules.

(b) Motions raising defenses and objections shall be made as follows:

(1) Any defenses or objections which are capable of determination other than at trial must be raised before trial by motion.

(2) Defenses and objections based on defects in the institution of the prosecution of the complaint other than that it fails to show jurisdiction in the Court or fails to charge an offense must be raised on motion before trial or such shall be deemed waived, unless the Court for good cause shown grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as defenses or noticed by the Court on its own motion at any stage of the proceeding.

(3) Such motions shall be made in writing and filed with the Court at least five (5) business days before the day set for trial. Such motions will be argued before trial unless the Court directs otherwise. Decision on such motions shall be made by the judge and not by the jury.

(4) If a motion is decided against a defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of a defendant, the judge shall alter the proceedings or enter judgment as is appropriate in light of the decision.

Rule 12. Trial Together of Charges.

(a) Two or more defendants may be tried together if they could have been joined in a single complaint and a single defendant may be tried on more than one complaint at a single trial.

(b) If it appears that a defendant or the Cheyenne River Sioux Tribe is prejudiced by a joinder of offenses or other defendants for trial together, the Court may order separate complaints and may order separate trials or provide such other relief as justice requires. In ruling on a motion for severance, the Court may order the Tribe to deliver to the Court for inspection in chambers, any statements made by a defendant which the Tribe intends to introduce in evidence at the trial.

Rule 13. Discovery and Inspection.

(a) The police, or prosecutor, shall, upon request permit the defendant or his attorney to inspect and copy any statements or confessions, or copies thereof, made by the defendant if such are within the possession or control of reasonably obtainable by the police or prosecution. The police and prosecution shall make similarly available copies of reports of physical, mental or scientific tests or examinations relating to or done on the defendant.

(b) The defendant or his attorney shall reveal by written notice to the Court at least five (5) working days before the trial the names of any witnesses upon whom the defense intends to rely to provide an alibi defense for the defendant. Failure to provide such notice will prevent the use of such witnesses by the defense unless it can be shown by the defense that prior notice was impossible or that no prejudice to the prosecution has resulted, in which case the judge may order the trial delayed or make such other orders as tend to assure a just determination of the case.

(c) The Court shall, upon motion of either party, hold a pretrial conference before trial. The Court shall compel the attendance of the Defendant and his counsel at the conference. The prosecution and defendant may be required by the court to exchange discoverable information at the conference. The court shall at that time consider all pretrial motions and the court may issue

such orders as deemed proper to regulate the conduct of trial.

Rule 14. Subpoena.

(a) A subpoena is an order of court issued by a judge or the clerk of courts. It shall command each person to whom it is directed to attend and give testimony or place specified therein. The clerk may issue subpoenas, signed and otherwise complete except for the name of the person or thing subpoenaed to a defendant upon request.

(b) A subpoena may be served by any police officer or court employee or any resident tribal member over the age of 18 years who is not a party. Service shall be accomplished by handing a copy of the subpoena to the person named therein. No fees or mileage allowance need be tendered with service.

(c) A subpoena may be served any place within the territorial jurisdiction of the Cheyenne River Sioux Tribal Court.

(d) Failure, without adequate excuse, to obey a properly served subpoena may be deemed a contempt of court and prosecution thereof may proceed upon the order to the court. No contempt shall be prosecuted unless a return of service of the subpoena has been made on which is endorsed the date, time and place of service and the person performing such service.

III. TRIAL

Rule 15. Trial by Jury or By the Court.

(a) All criminal trials shall be by the Court without a jury unless the defendant files a request for a jury trial not less than three weeks prior to the date set for trial.

(b) Juries shall be composed of six (6) members with one alternate if such is deemed advisable by the Court.

(c) In a case tried without a jury, the judge shall make a general finding of guilt or innocence and shall,

upon request of any party, make specific findings which may be embodied in a written decision.

Rule 16. Trial Jurors.

(a) Jurors shall be drawn from the list of eligible jurors, prepared as provided elsewhere in this Code, by the Clerk in advance of trial. Jurors to sit at trial shall be drawn by lot from the group of potential jurors by the judge or clerk at trial.

(b) The Court shall permit the defendant or his counsel and the prosecutor to examine the jurors and the Court itself may make such an examination.

(c) Challenges regarding jury members may be taken as follows:

- (1) Each side shall be entitled to three (3) peremptory challenges;
- (2) Either side may challenge any juror for cause;
- (3) An alternate juror shall be treated as a regular juror for purposes of challenges.

(d) The alternate juror shall be dismissed prior to the jury's retiring to deliberate if he has not first been called to replace an original juror who has become for any reason unable or disqualified to serve.

Rule 17. Judge Disability.

(a) If by reason of death, sickness or other disability, the judge before whom a jury trial has commenced is unable to proceed with the trial, any other Tribal judge may, upon certifying that he has familiarized himself with the record of the trial, proceed with the trial.

(b) If by reason of death, sickness or other disability, the judge before whom the defendant has been tried is unable to perform the required duties of a judge after a verdict or finding of guilty, any other Tribal judge may perform those duties in which case a new trial may be granted. A new trial shall not be granted if all that remains to be done is the sentencing of a defendant.

Rule 18. Evidence.

The admissability of evidence and the competence and

privileges of witnesses shall be governed by the Federal Rules of Evidence, except as herein otherwise provided.

Rule 19. Expert Witnesses and Interpreters.

(a) Either party may call expert witnesses of their own selection and bear the cost of such.

(b) The Court may appoint an interpreter of its own selection and each party may provide their own interpreters. An interpreter through whom testimony is received from a defendant or witness or communicated to a defendant or other witness shall be put under oath to faithfully and accurately translate and communicate as required by the Court.

(c) The trial judge or clerk may act as interpreter with the consent of all parties.

Rule 20. Motion for Judgment of Acquittal.

(a) The Court on motion from defendant or on its own motion, shall order the entry of a judgment of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as a matter of law to sustain a conviction of such offenses. A motion for acquittal by the defendant does not affect his right to present evidence.

(b) If a motion for judgment of acquittal is made at the close of all evidence, the Court may reserve decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged.

Rule 21. Instructions.

At the close of the evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the request. At the same time, copies of such request shall be furnished to adverse parties. The Court shall rule on proposed instructions, and shall then instruct the jury before closing arguments. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of the objection. Opport-

unity shall be given to make the objection out of the hearing or if necessary out of the presence of the jury.

Rule 22. Verdict.

(a) The verdict of the jury shall be unanimous. It shall be returned by the jury to the judge in open court.

(b) If there are two or more defendants, the jury may at any time during its deliberations return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree as to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if such an attempt is an offense, without the necessity of the defendant having been formally charged with such lesser offenses or with attempt.

(d) When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or upon the Court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

IV. JUDGMENT

Rule 23. Judgment and Sentencing.

(a) A judgment of conviction shall set forth the pleas, the verdict of findings, and the adjudication and sentence when imposed. If the defendant is found not guilty or for any other reason entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the Clerk.

(b) Sentence shall be set forth as follows:

(1) Sentence shall be imposed without unreasonable delay as provided in this Code. Pending sentence the Court may commit the defendant to jail or continue or alter the bail. Before imposing sentence, the Court shall afford counsel an opportunity to speak on behalf of the pro-

ecution and defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment.

(2) After imposing sentence in a case which has gone to trial on a plea of not guilty, the Court shall advise the defendant of his right to appeal.

(c) The determination and imposition of sentence shall be in accordance with the provisions on sentencing set forth in the Cheyenne River Sioux Tribal Criminal Code.

Rule 24. New Trial.

The Court, on motion of a defendant, may grant a new trial to him if required in the interest of justice. If trial was by Court without a jury, the Court, on motion of a defendant for a new trial, may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only within thirty (30) days after final judgment, but if an appeal is pending the Court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within seven (7) days after verdict or finding of guilty or within such further time as the Court may fix during the seven-day period.

Rule 25. Arrest of judgment.

The Court, on motion of a defendant, shall dismiss the action if the complaint does not charge an offense or if the Court was without jurisdiction of the offense charged. The motion is arrest of judgment shall be made within seven (7) days after verdict or finding of guilty or plea of guilty, or within such further time as the Court may fix during the seven-day period.

Rule 26. Correction or Reduction of Sentence.

The Court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within thirty (30) days after the sentence is imposed, or within thirty (30) days after receipt by the Court of a mandate issued upon affirmance of the judgment or dismissal of an appeal. The Court may also reduce a sentence upon revocation of probation as provided in this Code.

Rule 27. Clerical Mistakes.

Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the Court at any time and after such notice, if any, as the Court orders.

V. APPEAL

Rule 28. Right of Appeal - How Taken.

(a) The defendant has the right to appeal from the following:

- (1) A final judgment of conviction;
- (2) From an order made, after judgment, affecting his substantial rights.

(b) The Tribe has the right to appeal from the following:

- (1) A judgment of dismissal in favor of the defendant upon a motion to dismiss based on any procedural irregularity occurring before a trial;
- (2) An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such a verdict can be rendered;
- (3) An order of the Court directing the jury to find for the defendant;
- (4) An order made after judgment affecting the substantial rights of the Tribe;

(c) A notice of appeal must be filed within 10 days of the entry of the final judgment or other appealable order and such must be served on all parties except the party filing the appeal.

(d) The clerk of the trial court shall prepare and transmit to the appellate court the record of the case appealed including a transcript or a copy of the minutes taken in all proceedings relevant thereto within 30 days from the filing of the appeal.

(e) The party taking the appeal shall be referred to as the appellant and the other party as the respondent. The name of the case will be the same as the name used at trial except the names of the parties not involved in the appeal may be omitted.

(f) Within thirty (30) days after the receipt by the appellate court of the trial court record, the appellant shall file a brief supporting his position on appeal. Within thirty (30) days after receipt of a copy of appellant's brief, the respondent shall file its brief. Each party shall file four copies of its brief with the Court. As soon thereafter as possible, the appellate court shall decide the case and may schedule and hold a hearing on the appeal.

Rule 29. Stay of Judgment and Relief Pending Review.

(a) A sentence of imprisonment may in the trial Courts' discretion, be stayed if an appeal is taken and the defendant may be given the opportunity to post bail. Any defendant not making bail or otherwise obtaining release pending appeal shall have all time spent in incarceration counted towards his sentence in the matter under appeal.

(b) A sentence to pay a fine or a fine and costs, may be stayed pending appeal upon motion of the defendant but the Court may require the defendant to pay such money subject to return if the appeal should favor the defendant and negative the requirements for paying such.

(c) An order placing the defendant on probation may be stayed on motion of the defendant if an appeal is taken.

Rule 30. Appellate Court Review of Appeal.

(a) If the appeal is irregular in any substantial particular, the appellate court may order, upon motion of the respondent, either the correction of the defects or the dismissal of the appeal.

(b) The appellate court will decide the appeal on the basis of the briefs submitted without oral argument unless oral argument is requested by any party upon filing his appeal or by the Court on its own motion.

(c) The appellate court will issue a written opinion or such separate opinions as required to fully explain the Court's disposition of the case. No order or disposition of an appeal shall be effective unless concurred in by at least two (2) judges, though their reasoning for such disposition need not concur.

(d) The appellate court shall make one of the following determinations of the appeal:

- (1) Affirm the trial court result;
- (2) Reverse or vacate the trial court judgment and remand for disposition in accordance with the order of the appellate court;
- (3) The judgment of the trial court will be deemed affirmed if no majority disposition can be reached by the appellate court.

VI. GENERAL PROVISIONS

Rule 31. Search and Seizure.

(a) A search warrant authorized under this rule may be issued by a Tribal judge on request of the tribal prosecutor, or any police officer or law enforcement officer of the tribal, federal, state or municipal government.

(b) A warrant may be issued under this rule to search for and seize any of the following:

- (1) Property that constitutes evidence of the commission of a crime;
- (2) Contraband, the fruits of crime, or things otherwise criminally possessed;
- (3) Property designed or intended for use or which is or has been used, as the means of committing a criminal offense.

(c) A warrant shall issue only upon sworn testimony or affidavit establishing grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based on hearsay evidence either in whole or in part. Before ruling on a request for a warrant, the judge may require the affiant to appear personally and be examined under oath. The warrant shall be directed to any police or law enforcement officer or official and shall command such person or persons to search, within a specified

period of time not to exceed 10 days, the person or place named for the property specified. The warrant shall be served in the daytime unless the issuing judge otherwise authorizes on the warrant. The warrant shall be returned to the judge after service or at the end of the 10-day period.

(d) The officer taking property under a warrant shall give the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return to the issuing judge shall be made promptly and shall be accompanied by an inventory of the property taken.

(e) A person aggrieved by an unlawful search and seizure may move the Tribal court for the return of the property on the ground that he is entitled to lawful possession of the property illegally seized. The judge may receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned and shall not be admissible at any hearing or trial.

(f) No law enforcement officer shall search or seize any premises, property or person without a search warrant unless he knows or has reasonable cause to believe that the person in possession of such property is engaged in the commission of an offense or such is done incident to a lawful arrest or under such other circumstances in which it would not be reasonable to require the obtaining of a warrant prior to the search.

(g) A law enforcement officer may stop any person in a public place whom he has probable cause to believe is in the act of committing an offense, or has committed an offense, or is attempting to commit an offense and demand of him his name, address, an explanation of his actions and may, if he has reasonable grounds to believe his own safety or the safety of others nearby is endangered, conduct a frisk-type search for weapons of such person.

(h) The term "property" is used in this rule to include documents, books, papers, and any other tangible object. The term "daytime" is used in this rule

shall mean the hours from 6:00 o'clock a.m. to 10:00 o'clock p.m., according to local time.

Rule 32. Arrest.

(a) An arrest is the taking of a person into custody in a manner authorized by law. An arrest may be made by either a police or law enforcement officer or by a private person.

(b) A tribal police officer may make an arrest in obedience to an arrest warrant, or he may, without a warrant, arrest a person:

- (1) For an offense committed in his presence;
- (2) When he has reasonable cause to believe the person has committed an offense, although not in his presence, and there is reasonable cause for believing that such person, before a warrant can be obtained, may:

- a. Flee the jurisdiction or conceal himself to avoid arrest, or
- b. Destroy or conceal evidence of the commission of an offense, or
- c. Injure or annoy another person or damage property belonging to another person.

(3) When the person arrested has committed a Class A or B offense although not in his presence;

(4) When a Class A or B offense has, in fact, been committed and he has reasonable cause to believe the person committed such offense;

(c) A private person may arrest another for an offense committed or attempted in his presence.

(d) Any person making an arrest may request or summons as many police officers as he deems necessary to help him.

(e) If the offense charged is a Class B or C offense, the arrest pursuant to a warrant cannot be made at night unless such is specifically authorized by the issuing judge.

(f) Any arresting officer:

- (1) Must inform the person to be arrested of his intentions to arrest him, of the cause or reason for the arrest, and his authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to commit an offense, or is pursued immediately after its commission or an escape if such is not reasonably possible under the circumstances;
- (2) Must show the warrant of arrest if such exists and is demanded as soon as practicable;
- (3) May use only that force which is reasonably necessary to effect an arrest;
- (4) May break open a door or window of a building in which the person to be arrested is, or is reasonably believed to be, after demanding admittance and explaining the purpose for which admittance is desired;
- (5) May search the person arrested and take from him and put into evidence all weapons he may have about his person;
- (6) Shall, as soon as reasonably possible, do as commanded by the arrest warrant or deliver the person arrested to the jail and obtain a complaint;
- (7) May, if in fresh pursuit, continue such pursuit and arrest upon capture the person pursued even if arrest would occur outside the exterior boundaries of the reservation. All persons so arrested may be returned to the reservation by the arresting officer if the arrest occurs in the State of South Dakota. Otherwise, the arrested person will be turned over to local police officials pending extradition proceedings.

Rule 33. Extradition.

(a) Any tribal judge, upon request of the Tribal Chairman, shall, upon receipt of certified copies of a complaint, information or indictment, and arrest warrant plus a request to extradite from the executive authority of any Tribal, State or the Federal Government, cause to be arrested and delivered to such executive authority,

any person subject to the jurisdiction of the Cheyenne River Sioux Tribe who is charged with a felony and who has fled from justice and is seeking to use the Reservation as a refuge.

(b) Hearing. If any person arrested as provided in the above section so demands, he shall be taken to the Cheyenne River Sioux Tribal Court, where the judge shall hold a hearing, and if it appears that there is no probable cause to believe the defendant guilty of the crime with which he is charged off the Reservation, the judge shall order the defendant released from custody.

(c) The Tribal Council shall be the only entity which may request the extradition to the Reservation of any person otherwise subject to the Cheyenne River Sioux Tribal Court who has committed a Class A or a Class B offense on the Reservation and thereafter fled from the Reservation to avoid prosecution.

Rule 34. Bail; Release From Custody.

(a) Except as herein provided, all persons arrested for offenses under this Law and Order Code and incarcerated shall be given the opportunity to make bail and be released pending their trial or appeal.

(b) A bail schedule for Class B and C offenses shall be adopted by the Court and a defendant may obtain release from jail at any time prior to arraignment by posting the amount or amounts of bail specified in the bail schedule for the offense or offenses charged; provided, however, that if the arresting officer or complaining witness shall certify to the jailer, or if the jailer shall certify based on his own observation, that the defendant is at the time he is brought to the jail unconscious or in an intoxicated or apparently intoxicated condition, or for any reason does not appear to be in a conscious and sober condition, such defendant shall not be allowed to post bail according to the bail schedule for 8 hours. The defendant shall be informed by the jailer of his right to make bail at the appropriate time. Bail for Class A offenses may be set only by a judge upon consideration of the relevant factors and must be set or denied within 36 hours following arrest.

(c) At the arraignment or other appropriate time, the judge shall set bail at an amount, not to exceed twice the maximum fine payable for the offense charged, which will tend to assure the appearance of the defendant at trial and at such other times as his appearance is necessary. A defendant may at arraignment request that any bail posted under the bail schedule be reduced or that he be released as under (d) below.

(d) The judge may at his discretion release the defendant on his own recognizance, if it appears substantially certain, considering all relevant factors, that the defendant will appear at the appointment time.

(e) The required bail may be tendered in the form of cash, or a bail bond executed by two or more reliable persons as sureties subject to the jurisdiction of the Court in the form which the Court shall by rule direct.

(f) In the event the defendant fails to appear as required, the Court will forfeit any cash deposited or order the sureties of the bail bond to pay the designated amount to the Court. The liability of the sureties may be enforced by order of the Court without the necessity of an independent action of judgment.

(g) The Court may order the forfeiture of bail for non-appearance set aside if it appears that justice does not require the enforcement of the forfeiture.

(h) The Court may deny release on bail pending trial or appeal when a Class A offense is involved and it appears reasonably certain that the defendant will pose a serious threat to the safety and well being of the Reservation and its residents if released.

(i) The right to be released on bail as provided herein shall not accrue until charges under this Law and Order Code shall have been filed. Persons incarcerated in the Tribal jail for violation of federal and state laws shall be subject to be released on bail by the jurisdiction under whose authority the arrest was made according to the provisions of the laws under which their arrest was made. A person arrested for violation of federal law shall not be entitled to be released on bail until the prosecution of such charges has been

declined by the U.S. Attorney, plus a reasonable time thereafter, not to exceed 36 hours after receipt of notification of such declination, in which charges for violation of this Law and Order Code, if any, may be filed.

Rule 35. Time Computations.

In computing any period of time in these Rules, the day of the act or event from which the designated period begins to run shall not be included, and the last day of the period will be included unless it is a Saturday or Sunday or a legal holiday. If a time period prescribed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall not be counted.

Rule 36. Motions.

An application to the Court for an order shall be by motion. A motion other than one made at trial or hearing shall be in writing unless the Court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit and/or a memorandum or points and authorities. A copy of all motions shall be served upon all parties or their counsel, and they shall be allowed to appear at a hearing before any order is issued in response to such motion.

Rule 37. Dismissal.

(a) The prosecutor may move that a complaint be dismissed and upon the Court's granting such motion the prosecution of that complaint shall cease, the defendant shall be released and any bail or bail bond released. Such a dismissal shall not be made during trial without the consent of the defendant.

(b) If there is an unreasonable and unnecessary delay in bringing a defendant to trial, the Court may, on motion of the defendant or its own motion, dismiss the complaint. No delay of less than six (6) months shall be considered unreasonable under this section.

Rule 38. Service and Filing of Papers.

(a) Written motions other than those which are heard ex parte, written notices and similar papers shall be served on each party in the manner provided for in civil actions.

(b) All papers required to be served shall also be filed with the Court.

Rule 39. Calendars.

(a) The Tribal Court shall provide for the placing of criminal proceedings on the court calendar with as little delay as is reasonably possible.

(b) The Tribal Court shall schedule criminal trials no less frequently than one day per month.

(c) The Court may for good cause shown by either party direct that a trial be postponed to the next or some succeeding month. However, if the prosecution, for good cause shown, requests and is granted a delay, and if the defendant is incarcerated not having made bail, the defendant shall be released on his own recognizance pending the rescheduled trial.

Rule 40. Exceptions Unnecessary.

Exceptions to rulings or order of the Court are unnecessary, and it is sufficient that a party at the time a ruling or order of the Court is sought makes known to the Court his objection or what action he wishes the Court to take and the grounds therefore; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

Rule 41. Harmless Error and Plain Error.

(a) Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Errors or defects affecting substantial rights may be recognized and acted upon by the Court even though they were not brought to the attention of the Court by counsel.

Rule 42. Regulation of Conduct in the Courtroom.

Each judge may regulate the conduct of persons in his courtroom and may forbid the taking of photographs or other visual or audio recordation of proceedings occurring therein.

Rule 43. Records.

The Clerk of the Court shall keep such records in criminal proceedings as the Chief Judge shall by rule direct. Among the records required to be kept by the Clerk shall be a book known as the "Criminal Docket" in which, among other things, shall be entered each order or judgment of the Court and the date thereof.

Rule 44. Rules of Court.

The Chief Judge may, in conjunction with the other Tribal judges, promulgate rules governing criminal procedure not inconsistent with these rules and in supplement thereto, and copies of such rules shall be made available for public inspection and copying.

Rule 45. Forms.

Any forms adopted for use in the courts are illustrative and not mandatory.

Rule 46. Citation.

These rules may be known and cited as the "Cheyenne River Sioux Tribal Rules of Criminal Procedure", or "C.R. R. Cr. P."

TITLE III

CHEYENNE RIVER SIOUX TRIBAL CRIMINAL CODE

I. GENERAL PROVISIONS

A. Introductory Provisions

Sec. 3-1-1 Name and Citation.

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

Sec. 3-1-2 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.

Sec. 3-1-3 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.

Sec. 3-1-4 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.

Sec. 3-1-5 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.

Sec. 3-1-6 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.

B. Multiple Prosecutions and Double Jeopardy

Sec. 3-1-7 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 if 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 defendants' course of conduct was uninterrupted, unless the Code provides that specific periods of such conduct constitute separate offenses.

Sec. 3-1-8 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 Cheyenne River Sioux Tribe.

Sec. 3-1-9 Seperate 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.

Sec. 3-1-10 Included Offenses.

(1) A defendant may be convicted of an offense included in an offense charged in a 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.

Sec. 3-1-11 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:

1. resulted in acquittal; or
2. resulted in conviction; or
3. was improperly terminated; or
4. 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 results 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 a 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, if 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:
 1. it is physically impossible to proceed with the trial in conformity to the law; or

2. 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
3. prejudicial conduct in or out of the courtroom not attributable to the prosecution makes it impossible to proceed with the trial without injustice to the defendant or to the prosecution; or
4. the jury is unable to agree on the verdict; or
5. a false statement of a juror on voir 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

Sec. 3-1-12 Burden and Presumption of Innocence.

(1) A defendant in a criminal proceeding is presumed to be innocent until 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 or 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.

Sec. 3-1-13 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.

Sec. 3-1-14 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

Sec. 3-2-1 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 determine his possession.

Sec. 3-2-2 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 offense when:

1. 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
2. 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:

1. if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature of that such circumstances exist; and
2. 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 reasonable persons would observe in the actor's situation.

(e) 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 provisions 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 negates 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 estab-

lished 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 a 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.

Sec. 3-2-3 Causal Relationship 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 magnitude that it would be unjust to find the element involved in light of such differences.

Sec. 3-2-4 Ignorance or Mistake.

(1) The law provides that the actual state of mind which exists itself constitutes a defense when intent is an element of the offense. However, state of mind may be inferred from the acts of the defendant.

(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.

Sec. 3-2-5 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 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 of promoting or facilitating the commission of an offense, he

1. solicits such other person to commit it; or
2. aids or agrees or attempts to aid such other person in planning or committing it; or
3. having legal duty to prevent the commission of the offense, fails to make proper effort to do so;

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

(4) When causing a particular result in 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 a 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
 - 1. wholly deprives it of effectiveness in the offense; or
 - 2. 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 of a different offense or degree of offense or has immunity from prosecution or has been acquitted.

Sec. 3-2-6 Corporation 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.

Sec. 3-2-7 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 awareness 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 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.

Sec. 3-2-8 Duress.

(1) Except as herein otherwise provided, it is an affirmative defense that the actor engaged in conduct

constituting 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 subject to duress.

(3) It is not a defense that a spouse acted on the command of their spouse, unless they acted under such coercion as would establish a defense under subsection 1 above. No presumption of duress arises from the mere presence of one spouse at the time the other 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.

Sec. 3-2-9 Consent.

(1) The consent of the victim to conduct constituting 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 constituting 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 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 constituting 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 constituting 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.

Sec. 3-2-10 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 jury. Evidence of past offenses shall be admissible only if the defendant takes the stand in his own defense.

Sec. 3-2-11 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 given 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.

Sec. 3-2-12 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.

Sec. 3-2-13 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 to 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.

(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.

Sec. 3-2-14 Justification as 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.

Sec. 3-2-15 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

Sec. 3-3-1 Sentencing in General.

(1) A person adjudged guilty of an offense under this Code shall be sentenced in accordance with this part.

(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.

Sec. 3-3-2 Designation of Offenses.

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

Sec. 3-3-3 Class of Offense Not Specified.

An offense for which no penalty or sentence is specifically designated as a certain class of offense shall be treated for purposes of sentencing and punishment as a Class C offense.

B. Sentencing

Sec. 3-3-4 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.

Sec. 3-3-5 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 combinations of such sentences:

- (a) to pay a fine;
- (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;
- (c) to probation and/or suspension of sentence on such terms and conditions as the Court may direct; and
- (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;
- (b) pay any civil penalty provided by law;
- (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 guilty 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.

Sec. 3-3-6 Maximum Fines and Sentences of Imprisonment.

(1) A person convicted of an offense may be sentenced as follows:

(a) if the offense is a Class A offense, to a term of imprisonment not to exceed 6 months and to a fine not to exceed \$500.00;

(b) if the offense is a Class B offense, to a term of imprisonment not to exceed 3 months and to a fine not to exceed \$200.00;

(c) if the offense is a Class C offense, to a term of imprisonment not to exceed 45 days and to a fine not to exceed \$100.00.

(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 or as otherwise ordered by the Court.

(3) The fines listed above may be imposed in addition to any assessment of costs or other civil penalties and in addition to any amounts ordered paid as restitution.

Sec. 3-3-7 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 any fines or other required payments to be made in installments and on conditions tailored to the means of the defendant.

(3) 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.

(4) 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.

Sec. 3-3-8 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 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.

Sec. 3-3-9 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 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 Cheyenne River Sioux Tribal Probation Department.

(5) Whenever a sentence or sentences are imposed to run concurrently 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.

Sec. 3-3-10 Credit.

(1) Credit against a term of imprisonment imposed following an adjudication of guilty shall be given to a defen-

dant 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 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.

Sec. 3-3-11 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 upon due notice to the Prosecution and the Defendant and after hearing if requested by either party.

(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 to 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.

Sec. 3-3-12 Board for the Disposition of Offenders.

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

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

Dakota;

(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 Probation Department;

(d) the head of the Alcohol and Drug Abuse Rehabilitation program on the Reservation;

(e) such other persons as the Council believes would be appropriate on such a Board;

(f) the trial judge who conducted the trial of an offender shall be 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 Tribal Probation 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, a minority recommendation may be included if desired by the dissenting 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.

Sec. 3-3-13 Sentencing Proceeding.

As soon as practicable after the determination of guilt and the examination of any pre-sentence reports or recommendations, 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 parties on the applicability of various sentencing alternatives to the facts of the case;

(3) afford the parties the opportunity to make statements 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 relevant to the sentencing decision;

(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

Sec. 3-3-14 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 or to 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 suspending a sentence or 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 governmental, 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 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 pay all or part of a fine and/or court costs imposed in the original sentence;

(n) 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.

(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 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.

Sec. 3-3-15 Period of Suspension or Probation; Modification.

(1) When the Court has suspended sentences 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, after notice to the parties and hearing if requested.

(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.

Sec. 3-3-16 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 suspension or probation order, or if he has been convicted of another crime, may revoke the suspension or probation and reimpose the original sentence.

(2) 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.

(3) Whenever a defendant is taken into and held in custody as provided in this section for violation of suspension or 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.

Sec. 3-3-17 Order Removing Disqualification or Disability Based on Conviction.

(1) When the Court has suspended sentence or has sen-

tenced 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.

Sec. 3-3-18 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. Parole

Sec. 3-3-19 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.

Sec. 3-3-20 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 the 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.

Sec. 3-3-21 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 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 of 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.

Sec. 3-3-22 Powers Over Parole.

Once parole is granted, the defendant shall be subject to the same procedures and conditions as if he were origin-

ally 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.

IV. OFFENSES

A. Inchoate Offenses

Sec. 3-4-1 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.

Sec. 3-4-2 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.

Sec. 3-4-3 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 A offense;

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

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

B. Offenses Against the Person

1. Assault and Related Offenses.

Sec. 3-4-4 Simple Assault.

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

(a) attempt 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 off 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.

Sec. 3-4-5 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.

(2) Aggravated Assault is a Class A offense.

Sec. 3-4-6 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.

Sec. 3-4-7 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 of 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.

2. Criminal Homicide and Related Offenses.

Sec. 3-4-8 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.

Sec. 3-4-9 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 South Dakota Code 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.

Sec. 3-4-10 Causing a Suicide.

(1) A person is guilty of causing a suicide if he purposely causes a suicide by force, duress, or deception.

(2) Causing a suicide is a Class A offense.

Sec. 3-4-11 Aiding or Soliciting a Suicide.

(1) A person is guilty of aiding soliciting a suicide if he purposely aids or solicits another to commit suicide.

(2) Aiding soliciting a suicide is a Class A offense if the defendant's conduct has actually caused or contributed substantially to a suicide or an attempted suicide; otherwise, it is a Class C offense.

3. Kidnapping and Related Offenses.

Sec. 3-4-12 Kidnapping.

(1) A person is guilty of kidnapping 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.

Sec. 3-4-13 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.

Sec. 3-4-14 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

1. knowing he has no legal right to do so; and
2. 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.

Sec. 3-4-15 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. Sexual Offenses.

Sec. 3-4-16 Rape.

Rape is an act of sexual penetration accomplished with any person other than the actor's spouse under any one or more of the following circumstances:

(1) Through the use of force, coercion or threats of immediate and great bodily harm against the victim's person, accompanied by apparent power of execution; or

(2) Where the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or

(3) Where the victim is incapable of giving consent because of any intoxicating, narcotic or anesthetic agent, or because of hypnosis, administered by or with the privity of the accused; or

(4) Where the victim is less than fifteen years of age.

Sec. 3-4-17 Indecent Exposure.

(1) A person is guilty of indecent exposure if, for the purpose of arousing or gratifying sexual desires of himself or of any other person other than one's spouse, exposes ones genitals.

(2) Indecent exposure is a Class C offense.

Sec. 3-4-18 Provisions Applicable to Sexual Offenses.

(1) The provisions of the code relating to sexual offenses shall not apply to conduct between married persons; provided, however, that for purposes of these provisions, persons living apart under a decree of judicial separation are not married.

(2) 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.

(3) Whenever an element of an offense depends on the age of a child being below the age of 15, it is no defense that the actor did not know the child's age or reasonably believed the child to be older than 15. Whenever an element of an offense depends on the age of a child being below a critical age other than 15, 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.

(4) 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.

Sec. 3-4-19 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 or 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 accommodations 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.

Sec. 3-4-20 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.

Sec. 3-4-21 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.

Sec. 3-4-22 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:

1. recklessly endangers human life; or

2. 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 pecuniary loss of less than \$100.00

in which case it is a Class C offense.

2. Burglary and Related Offenses.

Sec. 3-4-23 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.

Sec. 3-4-24 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.

Sec. 3-4-25 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, property, or violates the Hunting & Fishing Laws; 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.

Sec. 3-4-26 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 conduct 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.

Sec. 3-4-27 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.

Sec. 3-4-28 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 name 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 Cheyenne River Sioux 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 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.

Sec. 3-4-29 Grading of Theft Offenses.

(1) Theft of property or services 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.

(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.

Sec. 3-4-30 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.

Sec. 3-4-31 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.

Sec. 3-4-32 Theft by Extortion.

(1) A person is guilty of theft if he obtains or exercised 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.

Sec. 3-4-33 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.

Sec. 3-4-34 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, acquired 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.

Sec. 3-4-35 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 services 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.

Sec. 3-4-36 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.

Sec. 3-4-37 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.

Sec. 3-4-38 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 unharmed.

5. Forgery and Fraudulent Practices.

Sec. 3-4-39 Forgery.

(1) A person is guilty of forgery if, with purpose 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 that 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 executed; 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 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.

Sec. 3-4-40 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.

Sec. 3-4-41 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.

Sec. 3-4-42 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.

Sec. 3-4-43 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.

Sec. 3-4-44 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.

Sec. 3-4-45 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 services; 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;

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

2. "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.

Sec. 3-4-46 Commercial Bribery.

(1) One is guilty of commercial bribery if:

(a) he solicits, accepts, or agrees to accept any benefits as consideration for knowingly violating or agreeing to violate any duty of fidelity to which he is subject as agent or employee of another; trustee, guardian, or other fiduciary; lawyer, physician, accountant, appraiser, or other participant in the direction of affairs of an incorporated or unincorporated association; or 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.

Sec. 3-4-47 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:

1. 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

2. 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.

Sec. 3-4-48 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

1. 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
2. knowingly falsified any writing or record relating to the property; or
3. 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.

Sec. 3-4-49 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 or 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.

Sec. 3-4-50 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 the person.

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

Sec. 3-4-51 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 himself or another or to keep some other person from obtaining credit.

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

Sec. 3-4-52 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 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 commission or fees charged for obtaining credit.

(3) Criminal usury is a Class B offense.

D. Offenses Against the Family

1. Marital Violations.

Sec. 3-4-53 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, neice, 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.

2. Nonsupport and Related Offenses.

Sec. 3-4-54 Criminal Nonsupport.

(1) A person is guilty of criminal nonsupport if, without just cause and possessing the means to do so, he fails to provide for the support of his spouse, child under 18, or other dependant 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.

Sec. 3-4-55 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 the age of 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 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.

Sec. 3-4-56 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 care 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.

Sec. 3-4-57 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 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, lacked jurisdiction, or for any other reason.

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

Sec. 3-4-58 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, entreaty, 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.

Sec. 3-4-59 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.

Sec. 3-4-60 Retaliation for Past Official Action.

(1) A person is guilty of retaliation for past official action if he harms any person by an 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.

Sec. 3-4-61 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 contracts and involving no substantial risk of undermining official impartiality.

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

2. Abuse of Office.

Sec. 3-4-62 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:

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

2. speculates or wagers on the basis of such action or information; or knowingly aids another to do any of the foregoing.

(2) Official misconduct is a Class B offense.

Sec. 3-4-63 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.

Sec. 3-4-64 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.

Sec. 3-4-65 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 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.

Sec. 3-4-66 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 of affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn of 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.

Sec. 3-4-67 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.

Sec. 3-4-68 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.

Sec. 3-4-69 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.

Sec. 3-4-70 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:

1. testify or inform falsely; or
2. withhold any testimony, information, document or thing; or
3. elude legal process summoning him to testify or supply evidence; or
4. absent himself from any proceeding or investigation to which he has been legally summoned;

(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.

Sec. 3-4-71 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.

Sec. 3-4-72 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.

Sec. 3-4-73 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.

Sec. 3-4-74 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 to 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.

Sec. 3-4-75 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 complicity with law without affirmative interference with governmental functions.

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

Sec. 3-4-76 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 employees 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.

Sec. 3-4-77 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.

Sec. 3-4-78 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.

Sec. 3-4-79 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.

Sec. 3-4-80 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 is unlawful or improper for the detainee to possess.

(2) Providing contraband is a Class C offense.

Sec. 3-4-81 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.

Sec. 3-4-82 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, professional, 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.

Sec. 3-4-83 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.

Sec. 3-4-84 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 value if the damage done exceeds \$100.00; otherwise, injuring public property is a Class C offense.

5. Offenses Against Public Order and Decency.

Sec. 3-4-85 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.

Sec. 3-4-86 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.

Sec. 3-4-87 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.

Sec. 3-4-88 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.

Sec. 3-4-89 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.

Sec. 3-4-90 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.

Sec. 3-4-91 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.

Sec. 3-4-92 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.

Sec. 3-4-93 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:

1. overhearing of messages through a regularly installed instrument on a telephone party line or extensions; or
2. 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 a least one party thereto by means of an 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.

Sec. 3-4-94 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 reputa-

tion, 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.

Sec. 3-4-95 Possession of an Alcoholic Beverage by a Person Under 18.

(1) A person shall be guilty of possession of an alcoholic beverage by a person under 18 if, being under the age of 18 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 18 is a Class C offense.

6. Offenses Against Public Health, Safety, Welfare and Morals.

Sec. 3-4-96 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

(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.

Sec. 3-4-97 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.

Sec. 3-4-98 Weapons Offense.

(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; or

- (c) he carries a loaded firearm in a vehicle on a public road without lawful authority to do so; or
- (d) he has on his person a dangerous weapon with intent to unlawfully assault another; or
- (e) he discharges any kind of firearm from a motor vehicle without lawful authority to do so; or
- (f) he discharges a firearm from, upon or across any public highway without lawful authority to do so; or
- (g) being under the age of 16 years old, he possesses a firearm without the consent of his parent or guardian.

(2) Definitions:

(a) "Dangerous weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury. In determining whether an item, object or thing not commonly known as a dangerous weapon is a dangerous weapon, the character of the instrument, object or thing, the character of the wound produced, if any, and the manner in which the instrument, item or thing was used shall be determinative.

(b) "Firearms" means pistols, revolvers, rifles, shotguns, and any device that is capable of being used as a weapon because it expels a projectile by some means of force.

(3) A firearm or other weapon shall be deemed loaded when there is an unexpended cartridge, shell or projectile in the firing position, except in the case of pistols and revolvers, in which case they shall be deemed loaded when the unexpended cartridge, shell or projectile is in a position that the manual operation of any mechanism once would cause the unexpended cartridge, shell, or projectile to be fired.

(4) Weapons offense is a Class B offense.

Sec. 3-4-99 Aggravated Weapons Offense.

(1) A person is guilty of aggravated weapons offense if:

- (a) he carries a dangerous weapon concealed on his person; or

(b) he threatens to use or exhibits a dangerous weapon in a dangerous and threatening manner, or uses a dangerous weapon in a fight or quarrel; or

(c) he possesses a shotgun or rifle having a barrel or barrels of less than 16 inches in length or an altered or modified shotgun or rifle less than 26 inches overall length.

(2) Aggravated weapons offense is a Class A offense.

Sec. 3-4-100 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 if 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 parts, 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.

Sec. 3-4-101 Abuse of Psychotoxic Chemical Solvents.

(1) A person is guilty of abuse of psychotoxic chemical solvents if:

(a) for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of his brain or nervous system, he purposely:

1. smells or inhales the fumes of any psychotoxic chemical solvent; or
2. possesses, purchases, or attempts to possess or purchase any psychotoxic chemical solvent; or

(b) knowing or believing that the purchaser or another intends to use a psychotoxic chemical solvent in violation of this section, he sells or offers to sell any psychotoxic chemical solvent.

(2) This section shall not apply to the inhalation of anesthesia for medical or dental purposes.

(3) As used in this section, "psychotoxic chemical solvents" includes any glue, cement, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, ethyl-alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl, petone, pentachlorophenol, petroleum ether, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement or listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

(4) Abuse of psychotoxic chemical solvents is a Class C offense.

Sec. 3-4-102 Water Offenses.

(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:

1. 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
2. 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
3. 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
4. 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.

Sec. 3-4-103 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) 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

(c) 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) Public nuisance is a Class C offense.

Sec. 3-4-104 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 without 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 person's consent with the intent to lead others 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.

Sec. 3-4-105 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 18 years; or

(b) he knowingly or recklessly, by act or omission, encourages, causes or contributes to the delinquency of a minor under 18 years of age.

(2) Contributing to the delinquency of a minor is a Class B offense.

Sec. 3-4-106 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.

Sec. 3-4-107 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 Council prior to the importation and use of such fireworks.

(3) Fireworks offense is a Class C offense.

Sec. 3-4-108 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 Council to maintain a junkyard.

(2) Littering is a Class C offense.

Sec. 3-4-109 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 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 Council 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.

Sec. 3-4-110 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; or
- (e) he knowingly uses a welfare benefit in a manner contrary to the regulations relating thereto.

(2) Welfare offense is a Class C offense.

Sec. 3-4-111 Alcoholic Beverages.

Definitions.

(1) "Alcoholic beverage" means any drink or drinkable liquid containing more than one-half of one percentum of alcohol by weight and all mixtures, compounds or preparations, whether liquid or not, which contain more than one-half of one percentum of alcohol by weight and which are capable of human consumption.

(2) "Beer" means any beverage containing not less than one-half of one percentum of alcohol by weight and obtained by the alcoholic fermentation of an infusion or decoction of any malted grain or similar product, and includes ale, stout and porter. "Light beer" means beer containing not more than 3.2 percentum of alcohol by weight.

(3) "Tribal Council" means the Tribal Council of the Cheyenne River Sioux Tribe of the Cheyenne River Sioux Indian Reservation.

(4) "Manufacture" means to distill, brew, rectify, blend, mix, compound, process, ferment or otherwise make an alcoholic beverage.

(5) "Member" or "Member of the Tribe" means an enrolled member of the Cheyenne River Sioux Tribe of the Cheyenne River Sioux Indian Reservation.

(6) "Minor" means any person who has not reached his twenty-first birthday.

(7) "Person" includes any individual, firm, partnership, corporation, association, group or combination, and the plural as well as the singular number, or the agent of any of the foregoing.

(8) "Premises" means any room, enclosure, building or structure.

(9) "Public place" means and includes any place, building or conveyance to which the public has or is permitted to have access, and any highway, street, lane, park or place of public resort or amusement.

(10) "Restaurant" means a place of business where a variety of hot food is prepared and cooked, and meals are served to the general public in connection with indoor dining accommodations.

(11) "Reservation" means all property within the exterior boundaries of the Cheyenne River Sioux Indian Reservation and all lands subject to the territorial jurisdiction of the Tribe.

(12) "Retailer" means any person engaged in the sale or distribution of alcoholic beverages to the consumer.

(13) "Sell" or "to sell" shall include all of the following: to solicit and/or receive an order for or keep or expose for sale; to deliver for value; to peddle; to possess with intent to sell; to traffic in; and any consideration, promised or obtained, directly or indirectly or under any pretext or manner whatsoever, to procure or allow to be procured for any other person; "sale" shall include every activity of selling as defined herein.

(14) "Tavern" means a place where alcoholic beverages are sold for consumption on the premises.

(15) "Tribe" means the Cheyenne River Sioux Tribe of the Cheyenne River Sioux Indian Reservation.

Sec. 3-4-112 Compliance with South Dakota Law.

(1) The provisions and requirements of this ordinance and any rules, regulations and licenses authorized hereunder shall apply in addition to and not instead of the laws of the State of South Dakota which laws shall apply to the manufacture and sale of alcoholic beverages within the Reservation.

(2) To the extent, if any, that the Tribe shall enter into any agreements with the State of South Dakota or department or agency thereof regarding the manufacture or sale of alcoholic beverages within the reservation, the terms of such agreement or agreements shall be deemed to be the law of the State of South Dakota for all matters covered by such agreements.

Sec. 3-4-113 Unlawful Acts; Punishments.

(1) It shall be unlawful and punishable as provided herein for any person:

(a) to manufacture and/or sell any alcoholic beverage within the Reservation without having first obtained from the Tribe all appropriate licenses relating thereto;

(b) to manufacture and/or sell any alcoholic beverage within the Reservation contrary to the terms of this ordinance, any rules or regulations adopted under authority of this ordinance, or the terms or conditions of any license issued under authority of this ordinance;

(c) to manufacture or sell alcoholic beverages in a manner which is illegal under the laws of the State of South Dakota, provided, however, that if a member of the Tribe violates any provision of this ordinance no consent or authority is given hereby to the State of South Dakota or any officer or agent of the State of South Dakota to enforce said laws against any member of the Tribe; and provided further, that this provision does not in any way give, transfer or cede to the State of South Dakota any of the rights, powers or jurisdiction of the Tribe.

(2) Violation of this ordinance shall be punishable by a fine of not more than \$500.00 or by imprisonment of not more than six months, or by both such fine and imprisonment.

Sec. 3-4-114 Licenses.

(1) After the effective date of this ordinance, any person who engages in the manufacture or sale of alcoholic beverages within the Reservation shall be required, as a precondition to such manufacture or sale, to have obtained all appropriate licenses from the Tribe.

(2) There are hereby established three (3) classes of licenses: Manufacturer's License, Tavern License, and Retailer's License.

(3) Manufacturer's License: A manufacturer's license shall entitle the holder thereof to manufacture within the Reservation such types of alcoholic beverages as may be specifically indicated on the license. No manufacturer's license may issue except upon proof to the issuing authority that the applicant has complied with any and all licensing rules and regulations of the Federal Government and the State of South Dakota and unless, in the judgment of the issuing authority, such manufacture will not detract from the health, safety, welfare or morals of the residents of the Reservation.

(4) Tavern License: A tavern license shall entitle the holder thereof to sell alcoholic beverages for consumption on the premises specified in the license in accordance with the laws of the State of South Dakota and any rules and regulations established by the issuing authority. Unless otherwise specifically stated on the Tavern License, a Tavern License shall only entitle the holder thereof to sell light beer.

(5) Retailer's License: A retailer's license shall entitle the holder thereof to sell alcoholic beverages for consumption off of the premises specified in the license in accordance with the laws of the State of South Dakota and any rules and regulations of the issuing authority. Unless otherwise specifically stated on the Retailer's License, a Retailer's License shall only entitle the holder thereof to sell light beer.

(6) The issuing authority for all licenses shall be the Tribal Council unless and until such time as the Tribal Council shall by resolution otherwise designate.

(7) The issuing authority shall have authority to prescribe forms, rules and regulations, subject to the approval of the Tribal Council if some other body shall be designated as the issuing authority, which shall have the force of law when properly adopted. Such forms, rules and regulations may include any subject reasonably related to the sale or manufacture of alcoholic beverages and the obtaining of licenses hereunder.

(8) Licenses shall be issued for a period of not to exceed one year.

(9) Licenses for the sale or manufacture of alcoholic beverages within the Reservation are a privilege granted by the Tribe and no person shall have any vested rights therein.

(10) Fees: Unless and until altered by the issuing authority, the following annual fees shall be charged for licenses issued hereunder:

	<u>Member of the Tribe</u>	<u>Non-member of the Tribe</u>
Manufacturer's License		
Tavern License		
Retailer's License		

Sec. 3-4-115 Enforcement.

(1) Officers of the Tribal Police are hereby authorized to enforce the provisions of this ordinance.

(2) The issuing authority may designate other persons to enforce the provisions of this ordinance, either in addition to or instead of the Tribal Police.

(3) Any person aggrieved by an action of the issuing authority may request a rehearing before such body as a precondition to seeking relief in Tribal Court.

(4) The Tribal Courts shall have jurisdiction to hear challenges to this ordinance, appeals from the actions of the issuing authority, and to try any person charged with violating this ordinance. Appeals from the decision of the Tribal Court shall be to the Tribal Appellate Court.

Sec. 3-4-116 Effective Date.

The provisions and requirement of this ordinance shall take effect thirty (30) days after this ordinance has been certified by the Secretary of the Interior and published in the Federal Register as required by 18 USC §1161.

Sec. 3-4-117 Controlled Substances.

Definitions.

For the purposes of this Act:

(1) "Controlled substance" means a drug, substance or immediate precursor listed in schedules I through V of this Act.

(2) "Deliver or delivery" means the actual or constructive transfer from one person to another of a controlled substance, whether or not there is an agency relationship. For purposes of this Act, it also includes an offer to sell a controlled substance. Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

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

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

(5) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(6) "Distributor" means a person who distributes.

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

(8) "Narcotic drugs" means coca leaves, opium, cannabis, isonipecaine, amidone, isoamidone, ketobemidone, lysergic acid diethylamide, commonly known as LSD, and every substance neither chemically nor physically distinguishable from them; and other drugs to which the federal laws relating to narcotic drugs may now apply; and any drug which the State of South Dakota Health Officer may find by rule and regulation to have addiction-forming or addiction-sustaining liability similar to morphine or cocaine.

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

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

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

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

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

(14) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific

investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze or conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state; or

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

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

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

Sec. 3-4-118 Standards and Schedules.

The Cheyenne River Sioux Tribal Council determines that the substance listed in Schedules I, II, III, IV, and V shall be controlled substances.

Sec. 3-4-119 Schedule I - Opiates and Hallucinogenics.

(a) Schedule I shall initially consist of the controlled substances listed in this section.

(b) Any of the following opiates, indicating their isomers, esters, ethers, salts, and salts of isomers, esters and ethers unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Allylprodine;
- (2) Benzethidine;
- (3) Betaprodine;
- (4) Clonitazene;
- (5) Dextrorphan;
- (6) Diampromide;
- (7) Diethylthiambutene;
- (8) Dimenoxadol;
- (9) Dimethylthiambutene;

- (10) Dioxaphetyl butyrate;
- (11) Dipipanone;
- (12) Ethylmethylthiambutene;
- (13) Etonitazene;
- (14) Etoxeridine;
- (15) Furethidine;
- (16) Hydroxypethidine;
- (17) Ketobemidone;
- (18) Levophenacymorphan;
- (19) Meprodine;
- (20) Methadol;
- (21) Moramide;
- (22) Morpheridine;
- (23) Noracymethadol;
- (24) Norlevorphanol;
- (25) Normethadone;
- (26) Norpipanone;
- (27) Phenodoxone;
- (28) Phenampromide;
- (29) Phenomorphan;
- (30) Phenorperidine;
- (31) Piritramide;
- (32) Proheptazine;
- (33) Proheptazine;
- (34) Propiram;
- (35) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acthldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Etorphine;
- (10) Heroin;
- (11) Hydromorphenol;
- (12) Methyldesorphine;
- (13) Methyldihydromorphine;
- (14) Morphine methylbromide;

- (15) Morphine methylsulfonate;
- (16) Morphine-N-Oxide;
- (17) Myrophine;
- (18) Nicocodeine;
- (19) Nicomorphine;
- (20) Normorphine;
- (21) Pholcodine;
- (22) Thebacon.

(d) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) 3, 4-methylenedioxy amphetamine;
- (2) 5-methoxy-3, 4-methylenedioxy amphetamine;
- (3) 3, 4, 5-trimethoxy amphetamine;
- (4) Bufotenine;
- (5) Diethyltryptamine;
- (6) Dimethyltryptamine;
- (7) 4 methyl-2, 5-dimethoxyamphetamine;
- (8) Ibogaine;
- (9) Lysergic acid diethylamide;
- (10) Marijuana;
- (11) Mescaline;
- (12) Peyote;
- (13) N-ethyl-3-piperidyl benzilate;
- (14) N-methyl-3-piperidyl benzilate;
- (15) Psilocybin;
- (16) Psilocyn;
- (17) Tetrahydrocannabinols and synthetice equivalents of the substances contained in the plant, or in the resinous extractives of cannabis or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol and its optical isomers;

Sec. 3-4-120 Schedule II - Opium and Amphetamines.

(a) Schedule II shall initially consist of the controlled substances listed in this section.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, however produced:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, including the following:

- (A) Raw opium;
- (B) Opium extracts;
- (C) Opium fluid extracts;
- (D) Powdered opium;
- (E) Granulated opium;
- (F) Tincture of opium;
- (G) Apomorphine;
- (H) Codeine;
- (I) Ethylmorphine;
- (J) Hydrocodone;
- (K) Hydromorphine;
- (L) Metopon;
- (M) Morphine;
- (N) Oxycodone;
- (O) Oxymorphone;
- (P) Thebaine;

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) of this section, but not including the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straws;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and

salts is possible within the specific chemical designation:

- (1) Alphaprodine;
- (2) Anileridine;
- (3) Bexitramide;
- (4) Dihydrocodeine;
- (5) Diphenoxylate;
- (6) Fentanyl;
- (7) Isomethadone;
- (8) Levomethorphan;
- (9) Levorphanol;
- (10) Metazocine;
- (11) Methadone;
- (12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (13) Moramide-Intermediate, 2-methyl-3-corpholino-1, 1-duphenylpropane-carboxylic acid;
- (14) Pethidine;
- (15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (18) Phenazocine;
- (19) Piminodine;
- (20) Racemethorphan;
- (21) Racemorphan.

(d) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (1) amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) methamphetamine, including its salts, isomers, and salts of isomers;
- (3) methylphenidate and its salts; and
- (4) phenmetrazine and its salts.

(e) Methaqualone.

Sec. 3-4-121 Schedule III - Depressants and Narcotics.

(a) Schedule III shall initially consist of the controlled substances listed in this section.

(b) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect of the central nervous system:

- (1) any substance which obtains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;
- (2) Chlorhexadol;
- (3) Glutethimide;
- (4) Lysergic acid;
- (5) Lysergic acid amide;
- (6) Methyprylon;
- (7) Phencyclidine;
- (8) Sulfondiethylmethane;
- (9) Sulfonethylmethane;
- (10) Sulfonmethane.

(c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

- (1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with a equal or greater quantity of an isoquinoline alkaloid of opium;
- (2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;
- (3) not more than 300 milligrams of dihydrocodeinone, or any of its salts, 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, or any of its salts, 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, or any of its salts, 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 or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more 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, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

Sec. 3-4-122 Schedule IV - Barbiturates.

(a) Schedule IV shall initially consist of the controlled substances listed in this section.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Barbital;
- (2) Chloral betaine;
- (3) Chloral hydrate;
- (4) Ethchlorvynol;
- (5) Ethinamate;
- (6) Methohexital;
- (7) Meproamate;
- (8) Methylphenobarbital;

- (9) Paraldehyde;
- (10) Petrichloral;
- (11) Phenobarbital.

(c) Any compound, mixture, or preparation containing any depressant substance listed in section (b) of this section is excepted from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

Sec. 3-4-123 Schedule V - Prescription Drugs.

(a) Schedule V shall initially consist of the controlled substances listed in this section.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal quantities other than those possessed by the narcotic drug alone:

- (1) not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;
- (2) not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
- (3) not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;
- (4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
- (5) not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams.

Sec. 3-4-124 Exclusion From Schedule.

A nonnarcotic substance is excluded from Schedule I through V if the substance may lawfully be sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act and the Cheyenne River Sioux Tribal Council shall have no power to include a nonnarcotic substance in Schedules I through V if the substance may lawfully be sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act.

Sec. 3-4-125 Regulation of Manufacture, Distribution, and Dispensing of Controlled Substances.

(a) Registration requirements.

(1) Every person who manufactures, distributes, analyzes, or dispenses any controlled substance within the exterior boundaries of the Cheyenne River Sioux Indian Reservation as set out in Section 4 of the Act of March 2, 1889, 25 Stat. 888 must possess a valid registration from the State of South Dakota Board of Pharmacy and a license from the State Treasurer of South Dakota. Said registrations must be obtained annually and be in compliance with all rules and regulations promulgated by the State of South Dakota.

(2) Persons registered with the State of South Dakota to manufacture, distribute, dispense, analyze, or conduct research with controlled substances may possess, manufacture, distribute, dispense, analyze, or conduct research with those substances to the extent authorized by their registration.

Sec. 3-4-126 Offenses and Penalties.

OFFENSE

(1) Unlawful manufacture or delivery of controlled substances.

(a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally manufactures, delivers or possesses with intent to manufacture or deliver a controlled substance listed in Schedules I through V.

PENALTY

(2) An individual adjudged guilty of an offense under Section 3.01 of this Chapter shall be guilty of a Class A offense.

OFFENSE

(3) Unlawful possession of controlled substance.

(a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a controlled substance listed in Schedules I through V unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice.

PENALTY

(4) An individual adjudged guilty of an offense under Section 3.03 of this Chapter shall be guilty of a Class A offense.

Sec. 3-4-127 Marijuana.

(1) Possession of marijuana.

(a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a usable quantity of marijuana.

(b) An offense under subchapter (a) of this chapter is:

- (1) A petty offense with a mandatory fine of \$25.00 if an individual possesses one ounce or less;
- (2) A Class D offense if an individual possesses more than one ounce but less than four ounces and said individual shall be punished by:
 - A) a fine not to exceed \$100.00
 - B) confinement in the Cheyenne River Sioux Tribal Jail for a term not to exceed 30 days;
 - or
 - C) both such fine and imprisonment.

- (3) A Class C offense if an individual possesses more than four ounces but less than one pound.
- (4) A Class B offense if an individual possesses more than one pound.

Sec. 3-4-128 Peyote Exemption.

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

Sec. 3-4-129 Conditional Discharge For First Offense.

(a) If any person who has not previously been convicted of an offense under this Act, or, subsequent to the effective date of this Act, under any statute of the United States or of any state relating to a substance that is defined by this Act as a controlled substance, is charged with a violation of this subchapter or is found guilty of violation of this subchapter after trial or on a plea of guilty, the Tribal Court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place him on probation on such reasonable conditions as it may require and for such period as the Tribal Court may prescribe, except that the probationary period may not exceed two years.

(b) Upon violation of a condition of the probation, the Tribal Court may enter an adjudication of guilt, pronounce sentence, and punish him accordingly, The Tribal Court may, in its discretion, dismiss the proceedings against the defendant and discharge him from probation before the expiration of the maximum period of his probation.

(c) A discharge or dismissal under this section shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by Tribal law for conviction of tribal offenses, including any provision for enhanced sentence or punishment for repeat or habitual offenders. There may be only one discharge and dismissal under this section with respect to any person.

(d) This section shall not be construed to provide an exclusive procedure. Any other procedure provided by Tribal Law relating to suspension of trial or probation may be followed, in the discretion of the Tribal Court.

Sec. 3-4-130 Forfeitures.

(a) The following are subject to forfeitures as authorized by this chapter:

(1) All controlled substances that are or have been manufactured, distributed, dispensed, delivered acquired, obtained, or possessed in violation of this Act;

(2) All raw materials, products, and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this Act;

(3) All property that is used, or intended for use, as a container for property described in paragraph (1) or (2) of this Chapter.

Sec. 3-4-131 Seizure.

Property subject to forfeiture under subchapter VII of this Code may be seized by any Tribal Officer under authority of a search warrant issued pursuant to this Code.

Sec. 3-4-132 Search Warrants.

A search warrant may be issued to search for and seize controlled substances possessed or manufactured in violation of this Code. The application for the issuance of and the execution of a search warrant under this Code shall conform to the provisions of the Cheyenne River Sioux Tribal Code of Criminal Procedure, 1978.

Sec. 3-4-133 Jurisdiction.

A person of the age of twenty-one (21) years or under, convicted of a first violation under this Act shall be presumed to be entitled to a deferred imposition of sentence. Jurisdiction under this section shall be in the Cheyenne River Sioux Tribal Juvenile Court depending upon the age of the offender.

Sec. 3-4-134 Disorderly Conduct.

A person commits an offense if he intentionally or knowingly:

- (a) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance leads to indicate an immediate breach of the peace;
- (b) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;
- (c) creates, by chemical means, a noxious and unreasonable odor in a public place;
- (d) abuses or threatens a person in a public place in an obviously offensive manner;
- (e) makes unreasonable noise in a public place or in or near a private residence that he has no right to occupy;
- (f) fights with another in a public place;
- (g) enters on the property of another and for a lewd or unlawful purpose looks into any dwelling on the property through any window or other opening in the dwelling;
- (h) discharges a firearm in a public place;
- (i) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm; or
- (j) exposes his anus or genitals in a public place and is reckless about whether another may be present who will be offended or alarmed by his act.

(a) Disorderly conduct is a Class C offense.

(b) It is a defense to prosecution under Section (d) above that the actor had significant provocation for his abusive or threatening conduct.

(c) For the purposes of this section, an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequences in the public place or near a private residence.

Sec. 3-4-135 Protective Custody.

A person who as a result of severe intoxication lacks the ability to perform normal physical functions or presents a clear and immediate danger to himself or others may be taken into protective custody and held in protective custody for a period not to exceed 24 hours; provided that such individual shall be released without unnecessary delay upon achieving sobriety. Nothing in this section shall be construed as constituting a criminal offense and no warrants, complaints or summons shall issue pursuant to this section.

TITLE IV

CHEYENNE RIVER SIOUX TRIBAL POLICE CODE

Sec. 4-1-1 Authority Over Police Function.

(1) The Tribal Council shall appoint a Chief of Police upon such terms and conditions of employment as they shall direct.

(2) The Chief of Police shall establish such ranks and appoint officers thereto within the Tribal Police as are deemed necessary

Sec. 4-1-2 Chief of Police.

The duties of the Chief of Police shall be as follows:

(1) To be responsible for and have charge over all tribal police functions on the Reservation;

(2) To be in command of all tribal law enforcement officers and employees;

(3) To instruct, train and advise tribal police officers for the efficient maintenance of law and order on the Reservation;

(4) To report to the Tribal Council on police activities;

(5) To recommend to the Tribal Council persons for appointment to and dismissal from the tribal police force;

(6) To provide policemen to the Tribal Courts to perform bailiff service, transportation of prisoners, and service of Court papers;

(7) To adopt reasonable regulations for police officers to serve as a standard of conduct to insure the efficient maintenance of law and order;

(8) To insure cooperation with other law enforcement agencies;

(9) To perform such other law enforcement related activities as the Tribal Council shall direct;

(10) To designate an acting Chief of Police to serve as Chief of Police in his absence.

Sec. 4-1-3 Appointment and Qualification of Police Officers.

(1) Tribal police officers shall be hired upon such terms and conditions of employment as the Tribal Council shall direct. The Tribal Council shall receive the recommendations of the Chief of Police prior to hiring anyone to be a police officer.

(a) Individuals selected must be in sound physical and mental condition and of sufficient size and strength to perform the required duties.

(b) They must be willing and able to attend police officer training courses as a condition to their hiring and continued employment.

(c) They must be of high moral character and have never been convicted of a felony or Class A offense or convicted of any other offense within one year prior to appointment.

(d) Preference in hiring shall be given to high school graduates in situations where qualifications are otherwise similar.

Sec. 4-1-4 Duties of Tribal Policemen.

The duties of Tribal Policemen shall be:

(1) To obey promptly all orders of the Chief of Police, ranking police officers, or a judge of the Tribal Court when assigned to Court duty.

(2) To report and investigate all violations of any law or regulation coming to their attention.

(3) To arrest all persons for violations of any law or regulation when there exists sufficient grounds for doing so.

(4) To lend assistance to other officers.

(5) To prevent, whenever possible, violations of the laws.

(6) To inform themselves as to the Tribal Law and Order Code and all other laws and regulations applicable to the Reservation, and to attend such training sessions as the Tribal Council or Chief of Police may direct.

(7) To become familiar with and practice at all times principles of good police procedure.

(8) To use no unnecessary force or violence in making arrests, searches or seizures.

(9) To abstain from the use of narcotics or the excessive use of alcohol and to refrain from engaging in any act which would reflect discredit on the Tribe or the Tribal police.

(10) To refrain from the use of profane, vulgar, insolent, or offensive language.

(11) To report to their superior officers all deaths or accidents of a serious nature or other events or impending events of importance.

(12) To keep all equipment furnished by the Tribe or the government in good repair and order and to immediately report the loss of any or all such property.

(13) To obey all regulations which the Chief of Police shall adopt.

Sec. 4-1-5 Dismissal of Police Officers.

Policemen may be suspended or dismissed for non-compliance with the provisions of this Code or other violations of regulations or neglect of duty.

Sec. 4-1-6 Deputizing.

(1) Tribal police officers may be deputized by another jurisdiction to aid in the effective law enforcement on the Reservation.

(2) Law enforcement officers and other law enforcement or security related personnel from other jurisdictions or other departments or enterprises of the Tribe may be deputized to aid in the enforcement of this Law and Order Code.

Sec. 4-1-7 Police Training.

It shall be the goal of the Tribal police to attract and retain experienced, professional police personnel. To this end, the Tribal Council and the Chief of Police shall establish minimum standards of training which all police officers will be encouraged to meet. Further, the Chief of Police shall explore, schedule, and arrange periodic training and retraining programs for Tribal police officers from all available sources. Such programs shall stress not only basic police procedures and techniques, but shall also deal with crime prevention, community and public relations, and other appropriate topics.

TITLE V
CHEYENNE RIVER SIOUX TRIBAL
JUVENILE CODE

I. GENERAL PROVISIONS

Sec. 5-1-1 Purpose and Construction.

It is the purpose of this Juvenile Code to secure for each child coming before the Tribal Juvenile Court such care, guidance, and control, preferably in his own home, as will serve his welfare and the best interests of the Cheyenne River Sioux Tribe; to preserve and strengthen family ties whenever possible; to preserve and strengthen the child's cultural and ethnic identity wherever possible; to secure for any child removed from his home that care, guidance and control as nearly equivalent as that which he should have been given by his parents to help him develop into a responsible, well adjusted adult; to improve any conditions or home environment which may be contributing to his delinquency; and at the same time, to protect the peace and security of the community and its individual residents from juvenile violence or law-breaking. To this end, this Code shall be liberally construed.

Sec. 5-1-2 Definitions.

As used in this Juvenile Code, the following definitions shall apply:

(1) "Court" means the Tribal Juvenile Court of the Cheyenne River Sioux Tribe unless the Tribal Court or some other Court is clearly intended.

(2) "Council" means the Tribal Council of the Cheyenne River Sioux Tribe.

(3) "Child" means a person who is an enrolled member of the Cheyenne River Sioux Tribe, or any other Indian on the Reservation, who is less than 18 years of age.

(4) "Adult" means any person who has reached his or her eighteenth birthday.

(5) "Detention" means the temporary care of children who require secure custody in physical restricting facilities pending court disposition or transfer to another jurisdiction.

(6) "Shelter" means the temporary care of children in physical unrestricting facilities pending court disposition or transfer to another jurisdiction.

(7) "Legal Custody" means a relationship embodying the following rights and duties: the right to physical custody of a child; the right and duty to protect, train and discipline him; the duty to provide him with food, clothing, shelter, education, and ordinary medical care; the right to determine where and with whom he shall live, and the right, in an emergency, to authorize surgery or other extraordinary care.

(8) "Guardian" means a guardian only of the person and not of the property or estate unless specifically provided.

(9) "Guardianship of the person" includes, among other things, the authority to consent to marriage, to enlistment in the Armed Forces, and to consent to major medical, surgical, or psychiatric treatment. "Guardianship of the person" also includes legal custody, if legal custody is not vested in another person, agency, or institution.

(10) "Residual parental rights and duties" means those rights and duties remaining with the parents after legal custody or guardianship, or both, have been vested in another person or agency, including, but not limited to, the responsibility for support, the right to consent to adoption, the right to determine the child's religious affiliation, and the right to reasonable visitation unless restricted by the court. If no guardian has been appointed, "residual parental rights and duties" also includes the right to consent to marriage, to enlistment in the Armed Forces, and to consent to major medical, surgical or psychiatric treatment.

(11) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in a petition have been proved.

(12) "Child Placement Agency" means an agency licensed to receive children for placement or adoption under the laws of the State of South Dakota; or an agency receiving children for placement or adoption in another state, which agency is licensed or approved for such license as required by law.

(13) "Deprivation of Custody" means transfer of legal custody by the court from parents or a previous legal custodian to another person, agency, or institution.

(14) "Termination of Parental Rights" means permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

(15) "Probation" means a legal status created by court order following an adjudication on the grounds of a violation of law whereby the child is permitted to remain in his home under prescribed conditions and under supervision by a probation officer designated by the court subject to return to the court for violation of any of the conditions prescribed.

(16) "Protective Supervision" means a legal status created by court order following an adjudication of the grounds of neglect or dependency whereby the child is permitted to remain in his home and supervision and assistance to correct the neglect or dependency is provided by a probation officer or other agency designated by the court.

(17) "Neglected Child" is a child found to be in one or more of the following situations:

(a) A child whose parents, guardian or custodian has abandoned him or has subjected him to mistreatment or abuse;

(b) A child who lacks necessary parental care by reason of the fault or habits of the parent, guardian or custodian;

(c) A child whose parent, guardian or custodian fails or refuses to provide proper or necessary subsistence, education or medical care, including surgery or psychiatric services when required, or any other care necessary for his health or wellbeing.

(18) "Dependant Child" is a child found to be in one or more of the following situations:

(a) A child who is homeless or without necessary support or care through no fault of his parent or guardian.

(b) A child who lacks necessary care by reason of the mental or physical condition of the parent, guardian or custodian.

(19) "State" means the State of South Dakota.

The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this Code.

II. DUE PROCESS OF LAW TO BE AFFORDED

Sec. 5-2-1 Procedures Established.

All provisions and procedures established herein shall be construed and applied so as to provide not less than the minimum requirements of due process of law to both children and adults subject to this Juvenile Code.

III. JURISDICTION

Sec. 5-3-1 Jurisdiction.

Except as otherwise specifically provided, the Juvenile Court shall have original jurisdiction over any Indian or member child residing upon or found upon the Reservation, and over all persons having the care, custody or control of such children in the following situations:

(1) Concerning any child who has violated any Federal, State, local or Tribal ordinance, regardless of where the violation occurred.

(2) Concerning any child who is a neglected or dependent child, as defined in Section 5-1-2 of this Code.

(3) Concerning any child who: a) being subject to compulsory school attendance, is habitually truant from school in defiance of persistent efforts by parents or school authorities; or b) habitually disobeys the reasonable and lawful demands of his parents, guardian, or other custodian and is ungovernable and beyond their control to such an extent as to clearly endanger his own welfare or the welfare of others.

(4) Proceedings to terminate the legal parent-child relationship, including termination of residual parental rights and duties.

(5) For the judicial consent to marriage, employment, or enlistment of a child in the Armed Forces and to emergency medical or surgical treatment of the child.

(6) The Juvenile Court shall also have original jurisdiction of the following proceedings, which shall be governed by the laws relating thereto without regard to the other provisions of this Juvenile Code:

(a) Proceedings for the adoption of a child;

(b) Proceedings for the commitment of a mentally retarded or mentally ill child;

(c) All proceedings to determine the custody or to appoint a legal custodian or a guardian of the person of a child.

Sec. 5-3-2 Concurrent Jurisdiction.

When a person 18 years of age or over who is under the continuing jurisdiction of the Juvenile Court pursuant to this Code violates any federal, state, local law or Tribal ordinance, the Tribal Juvenile Court shall have concurrent jurisdiction with the court having jurisdiction of the new offense.

Sec. 5-3-3 Transfer of Cases.

If, during the pendency of a criminal or quasi-criminal proceeding in the Tribal Court, including a preliminary hearing, it shall be ascertained that the person charged with less than 18 years of age at the time of committing the alleged offense, that Court shall transfer the case to the Tribal Juvenile Court, together with all papers, documents and transcripts of any testimony connected therewith. The Tribal Court shall order the person to be taken forthwith to the Tribal Juvenile Court or to the place of detention designated by the Tribal Juvenile Court, or shall release him to the custody of his parent or guardian or other person legally responsible for him, to be brought before the Tribal Juvenile Court at a time designated by it. The Juvenile Court shall then proceed as provided herein.

Sec. 5-3-4 Transfer.

Exercise of jurisdiction over a child on probation or under protective supervision, or of a child who is otherwise under the continuing jurisdiction of the Court, may be transferred by the Court, if the receiving court consents, to any court with proper jurisdiction.

Sec. 5-3-5 Felony Cases.

If the petition in the case of a child 14 years of age or older alleges that he committed an act which would constitute a felony or Class A offense if committed by an adult, and if the Court after full investigation and a hearing finds that it would be contrary to the best interests of the child, or of the public, or the Tribe, to retain jurisdiction, the Court may enter an order certifying to that effect and directing that the child be held for criminal proceedings in the Tribal Court. The provisions of Chapter 11 of this Juvenile Code and other provisions relating to provisions in children's cases shall, to the extent they are pertinent, be applicable to such hearings held under this section.

Sec. 5-3-6 Jurisdiction over Adults.

The Juvenile Court shall exercise jurisdiction over adults in the following cases:

(1) In any criminal case in which the offense charged is designated to protect children, and the Tribal Court certifies the case to the Juvenile Court for disposition. In such cases, trial of the adult in the Juvenile Court shall be handled according to the Cheyenne River Sioux Tribal Rules of Criminal Procedure, and the Court may sentence the convicted adult in any manner available to the Tribal Court. Certification of such cases shall occur only when it is made to appear to the Tribal Court that some interest of the Juvenile Court in a matter pending before it will be served thereby.

(2) In any case in which a child has come within the jurisdiction of the Juvenile Court, that Court shall have authority to exercise jurisdiction over adults to the extent necessary or reasonably believed to be necessary to make a proper disposition of each case, including authority to punish for contempt committed either in or out of the Court's presence.

Sec. 5-3-7 Continuance of Jurisdiction.

Jurisdiction obtained by the Court of a child through adjudication under Chapter 13 of this Juvenile Code shall be continued for purposes of this Code until he becomes 21 years of age, unless terminated prior thereto.

Sec. 5-3-8 Termination of Jurisdiction.

The continuing jurisdiction of the Court shall terminate:

(1) Upon order of the Court which may be made at any time; or

(2) Upon transfer of proceedings in Class A cases under subsection 5-3-5 of this Code.

The continuing jurisdiction of the Court is not terminated by marriage.

IV. POWERS AND DUTIES

Sec. 5-4-1 Powers and Duties of the Tribal Juvenile Court.

The Tribal Juvenile Court shall have the same powers and duties as provided for other Tribal Courts in this Law and Order Code.

V. JUDGES

Sec. 5-5-1 Appointment of Judges.

The Tribal Council shall appoint a judge for the Tribal Juvenile Court. Such judge shall be chosen without regard to political affiliation and on the basis of ability, judicial temperament, and special aptitude for juvenile court work. The judge of the Tribal Juvenile Court may be a member or a non-member of the Tribe. Any judge serving as the judge of the Tribal Juvenile Court at the time this Code is adopted, shall continue so to act.

Sec. 5-5-2 Term and Salary.

A judge shall be appointed for a term of six years and until a successor is appointed. The judge of the Tribal Juvenile Court shall receive such compensation, expenses, payments and other benefits as the Tribal Council shall prescribe.

Sec. 5-5-3 Temporary Appointments.

The Tribal Council may appoint a judge on a temporary basis when required to take the place of a judge who is temporary disabled, absent or for any reason unable temporarily to perform the duties of office.

Sec. 5-5-4 Annual Reports.

The Judge of the Tribal Juvenile Court shall prepare and submit to the Tribal Council an annual report of the operation of the Tribal Juvenile Court which shall include financial and statistical data, and shall report all funds received from all sources in connection with his office and the expenditure thereof.

Sec. 5-5-5 Expenditure of Funds.

The Judge of the Tribal Juvenile Court is authorized to receive and expend any funds which may become available from the federal or state governments or any sub-divisions thereof to carry out any of the purposes of this Code; and to this end, the judge may meet any federal or state requirements not in conflict with this Code which may be conditions precedent to receiving such funds.

Sec. 5-5-6 Cooperation with Other Agencies.

The Judge of the Tribal Juvenile Court may cooperate with the Federal government in a program for training personnel employed or preparing for employment in the Tribal

Juvenile Court, and may receive and expend funds from federal or state sources or from private donations for such purposes. Subject to the approval of the Tribal Council, the judge of the Tribal Juvenile Court may contract with public or non-profit institutions of higher learning for the training of such personnel, may conduct short-term training courses of its own, may hire experts on a temporary basis for such purposes, and may cooperate with the South Dakota Department of Public Welfare and other state departments or agencies in personnel training programs.

The judge, in the exercise of his duties and in the exercise of any duties to be performed by any other officers under his supervision or control, shall utilize such social services as may be furnished by the federal or state governments to the end that the Court may be economically administered without unnecessary duplication or expense.

Sec. 5-5-7 Placement of Children.

(1) In making any decision to place children in homes or institutions other than with one or both of the natural parents of the child, the Court shall, in all cases in which such action would not obviously be contrary to the child's best interests, determine whether or not there are relatives, friends, or other persons living on the Reservation who would be willing and able to provide a suitable temporary or permanent living environment for the child. The Court shall give consideration to and due regard for Tribal or family customs relative to the raising of children and shall endeavor to place all children requiring such in homes with cultural backgrounds similar to that which the child would have enjoyed if properly raised by his natural parents.

(2) In order to enable the Court to place children in a manner consistent with the foregoing subsection, whenever possible the Court shall make or cause to be made a continuing survey of Tribal members and other Indians living on the Reservation to determine the availability of homes suitable for child placement and the willingness of such persons to accept and care for placed children on either a permanent or temporary basis, or both. The Court shall, if necessary, determine the fitness of a home into which a child is to be placed, at or immediately prior to the time such placement is made.

(3) The Judge may contract, on behalf of the Tribe, with agencies or departments of the federal government or

with agencies or departments of the State of South Dakota or of other states, for the care and placement of children whose status is adjudicated under this Code, subject, however, to the approval of the Tribal Council before expenditure of any Tribal funds.

VI. OTHER OFFICERS - APPOINTMENT, SALARY, DUTIES

Sec. 5-6-1 Appointment of Probation Officers.

The Juvenile Court Judge may appoint such probation officers, clerks, and other persons as may be required to carry out the work of the Court, subject to Tribal Council approval of the expenditure of tribal funds to pay such persons. Probation officers of the Tribal Court may serve also for the Juvenile Court.

Sec. 5-6-2 Duties and Powers of Probation Officers.

The probation officer shall make preliminary inquiries and social studies and such other investigations as the judge may direct, and shall keep written records of such investigations or studies, and shall make reports to the judge as provided in this Code or as directed by the judge. Upon the placing of any person upon probation or under protective supervision, the probation officer shall explain to the child, if old enough, and the parents and other persons concerned, what the meaning and conditions of probation or protective supervision are and shall give them the necessary instructions. The probation officer shall keep informed concerning the conduct and conditions of each person on probation or under protective supervision and shall report thereon to the judge as he may direct. Probation officers shall use all suitable methods to aid persons on probation or under protective supervision to bring about improvements in their conduct or condition, and shall perform such other duties in connection with the care, custody or transportation of children as the Court may require. Probation officers shall have the powers of police officers for purposes of this Juvenile Code but shall, whenever possible, refrain from exercising such powers except in urgent situations in which a regular police officer is not immediately available.

Sec. 5-6-3 Clerk.

There shall be a Clerk of the Juvenile Court. The clerk shall keep a record of the Court proceedings and shall have the power to issue all processes and notices required herein, and shall perform such other duties as

may be assigned by the judge, including secretarial duties.

Sec. 5-6-4 Compensation.

The compensation and conditions of employment of all employees of the Tribal Juvenile Court shall be fixed by the Tribal Council.

Sec. 5-6-5 Referees - Appointment.

The judge, with the approval of the Tribal Council, may appoint a probation officer or other qualified person as referee to serve during the pleasure of the Court.

Sec. 5-6-6 Referee's Function.

The Judge may refer any case to a referee, or he may direct that all cases of a certain class or within a certain geographical area shall be heard in the first instance by a referee, in the same manner as cases are initiated and hearings are held by the Court. At the conclusion of the hearing before him, the referee shall transmit to the judge all papers relating to the case, together with his findings and recommendations in writing. The referee shall perform the functions of the court, except for the conducting of hearings on matters not assigned to the referee, in the judge's absence.

VII. COURT

Sec. 5-7-1 Sessions.

Court sessions shall be held within the Reservation at such places and at such times as the Judge shall direct.

Sec. 5-7-2 Court Facilities.

Suitable courtrooms for the hearing of cases, office space, equipment, and supplies for the use of the judge, officers, and employees of the Court shall be provided by the Tribal Council.

VIII. ADULTS

Sec. 5-8-1 Procedures Applicable.

Except when specific procedures are otherwise specified in this Juvenile Code, all matters concerning adults or the rights of any adult which come before the Juvenile Court need not be handled according to procedures established for the Tribal Court, but rather may be handled in an

informal manner as in other juvenile cases; provided, however, that the court shall see to it that minimum standards of procedural fairness are observed.

Sec. 5-8-2 Consent to Jurisdiction by Persons Living Off the Reservation.

Any adult living off the Reservation who obtains custody of a child, however designated, from the Juvenile Court either personally or as the result of association with an agency or institution to which such custody has been awarded, shall be deemed to have consented to the jurisdiction of the Tribal Juvenile Court for all purposes or actions in any way related to such custody or the child subject thereto.

IX. PROCEDURE

Sec. 5-9-1 Rules of Procedure.

To the extent feasible, the rules and forms governing practice and procedure and policies followed by the South Dakota Juvenile Court shall be adopted and followed in the Tribal Juvenile Court, subject, however, to the approval of the Tribal Council. Copies of such rules and forms shall be made available for public inspection by the Clerk of the Juvenile Court.

Sec. 5-9-2 Commencement of Action.

(1) Except as otherwise provided below, proceedings in childrens' cases before the Juvenile Court are commenced by petition.

(2) In the case of violations of motor vehicles or boating laws and ordinances, or fish and game laws and ordinances, a petition shall not be required and the issuance of a traffic or other citation or summons shall be sufficient to invoke the jurisdiction of the Juvenile Court; nor, unless the Court shall otherwise order, shall a preliminary investigation be required in such cases.

(3) Whenever the Court is informed by a police officer or any other person that a child is or appears to be within the Court's jurisdiction, the Clerk of the Court shall notify a probation officer or other designated person who shall make a preliminary inquiry to determine whether the interests of the public, the Tribe, or the child require that further action be taken. The report on the preliminary investigation shall be filed with the Court without unnecessary delay.

(4) The Court may, by rule, provide that police reports, or reports by other social service related agencies having contact with or custody or supervision over a child, may be filed with the Court in lieu of a preliminary investigation.

(5) On the basis of the preliminary inquiry, or other report as provided next above, the Juvenile Court Judge, or referee if so designated by the Judge, may authorize a petition to be filed.

(6) As an alternative to filing a petition; the Court may, with the assistance of probation officers or other designated individuals, make such non-judicial adjustments of the case as is practicable without a petition and proceedings thereunder. Such adjustments shall be made only in cases in which the facts are admitted and establish prima facie jurisdiction in the Tribal Juvenile Court, and further provided that consent is obtained from the parents or other custodians and also from the child if, in the court's opinion, he is of suitable age and discretion. Efforts to effect a non-judicial adjustment may not extend for a period of more than two months without leave of the Judge of the Juvenile Court, who may extend the period for an additional two months. A person attempting to effect such non-judicial adjustment shall have no authority to compel any person to appear at or visit any place or to produce any papers or things.

Sec. 5-9-3 Petitions - Content.

The petition shall set forth in simple and brief language the facts which bring the child within the jurisdiction of the Court, as provided in Section 5-9-3 of this Code. The petition shall further state: a) the name, age and residence of the child; b) the names and residences of his parents; c) the name and residence of his guardian, if there is one; d) the name and address of the nearest known relative if no parent or guardian is known; e) the name and residence of the person having physical custody of the child; and f) if any of the facts herein required to be stated are not known by the petitioner, the petition shall so state.

Sec. 5-9-4 Verification of Petition.

The statements in the petition may be made upon information and belief and the petition shall be verified.

Sec. 5-9-5 Petitions - Probation Officer.

The petition may be prepared and filed by any person, including a probation officer. At any time after a petition is filed, the Court may make an order providing for temporary custody of the child.

Sec. 5-9-6 Examinations.

The Court may, upon such notice and hearing, if any, as it deems proper, order that a child concerning whom a petition has been filed shall be examined by a physician, surgeon, psychiatrist, or psychologist, and may place the child in a hospital or other facility for such examination. After due notice and a hearing set for this specific purpose, the Court may order a similar examination of a parent or guardian whose ability to care for the child is at issue, if the Court finds from the evidence presented at the hearing that the parent's or guardian's physical, mental or emotional condition may be a factor in causing the neglect, dependency or delinquency of the child.

Sec. 5-9-7 Petitions - Dismissal.

The Court may dismiss a petition at any stage of the proceedings.

Sec. 5-9-8 Double Jeopardy.

When a petition has been filed under this Code, the child shall not then thereafter be subject to criminal prosecution based on the facts giving rise to the petition, except as otherwise provided in this Code.

Sec. 5-9-9 Professional Attorneys.

When a person is entitled to be represented by a professional attorney of his own choice and at his own expense in the Tribal Juvenile Court, he shall be so advised by the judge at the commencement of any proceedings before such court.

X. SERVICE OF PROCESS AND SEARCH WARRANTS

Sec. 5-10-1 Summons - When Required.

After a petition is filed and after such further investigation as the Court may direct, the Court shall promptly issue a summons. No summons is required as to any person who appears voluntarily or who files a written waiver of service with the Clerk of the Court at or prior to the hearing.

Sec. 5-10-2 Summons - Content - Requirements.

The summons shall contain the name of the Court, the title of the proceedings, and (except for published summons) a brief statement of the substance of the allegations in the petition. A published summons shall simply state that a proceeding concerning the child is pending in the Court and that adjudication will be made. The summons shall require the person or persons who have physical custody of the child to appear personally and bring the child before the Court at a time and place stated. If the person or persons so summoned are not the parent, parents, or guardian of the child, then a summons shall also be issued to the parent, parents, or guardian, as the case may be, notifying them of the pendency of the proceedings and of the time and place set for the hearing. No summons need be issued to a parent or parents whose parental rights have been terminated.

Sec. 5-10-3 Summons - Other Persons.

Summons may be issued to any person within the jurisdiction of the Court whose presence the Court deem necessary.

Sec. 5-10-4 Immediate Custody of Child.

If it appears from an affidavit or other sworn statement presented to the judge or referee, that the welfare of the child or protection of the public requires that the child be placed in detention or shelter care, the judge or referee may endorse upon the summons an order that an officer serving the summons shall at once take the child into custody or may issue a separate emergency custody or detention order for placement in a detention facility or elsewhere as designated by the Court.

Sec. 5-10-5 Emergency Medical Treatment.

Upon the sworn testimony of one or more reputable physicians, the Court may order emergency medical or surgical treatment which is immediately necessary for a child concerning whom a petition has been filed, pending the service of summons upon his parents, guardian or custodian.

Sec. 5-10-6 Compulsory Attendance of Witnesses.

A parent or guardian shall be entitled to the issuance of compulsory process for the attendance of witness on his own behalf or on behalf of the child. A guardian ad litem or a probation officer shall be entitled to compulsory process for the attendance of witnesses on behalf of the children or on behalf of the Tribe.

Sec. 5-10-7 Payment of Travel Expenses.

The Court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing of a case under this Code, not to exceed the amount allowed to witnesses for travel in other Tribal courts.

Sec. 5-10-8 Manner of Service - By Whom Served.

(1) Service of summons or process shall be made by a Tribal police officer, by any other peace officer, or by another suitable person selected by the Court.

(2) Service of summons on the Reservation may be made by delivering a copy thereof to the person summoned; provided, however, that parents of a child living together at their usual place of abode may both be served personally by delivering to either parent copies of the summons, one copy for each parent.

(3) If the Judge is satisfied that personal service of the summons is impractical under the circumstance, he may order service by registered mail, with a return receipt requested to be signed by the addressee only, to be addressed to the last known address of the person to be served on the Reservation. Service shall be complete upon return of the signed receipt to the Court.

Sec. 5-10-9 Substituted Service - Jurisdiction.

If the parent, parents, or guardian required to be summoned under Chapter 10 hereof cannot be found within the Reservation, the fact of their child's presence within the Reservation shall confer jurisdiction on the Court in proceeding in children's cases under this Code as to any absent parent or guardian, provided that due notice has been given in one of the following manners:

(1) If the address of the parent or guardian is known, by sending him a copy of the summons by registered mail with return receipt requested to be signed by the addressee only, or by personal service outside the Reservation. Service by registered mail shall be complete upon return of the signed receipt to the Court.

(2) If the address or whereabouts of the parent or guardian outside the Reservation cannot, after diligent inquiry, be ascertained, by publishing a summons in a newspaper having general circulation on the Reservation. The summons shall be published once a week for four (4) successive weeks. Service shall be complete on the day of the last publication.

Sec. 5-10-10 Service - Time Requirement.

In the case of service on the Reservation, service completed not less than 48 hours before the time set in the summons for the appearance of the person served shall be sufficient to confer jurisdiction. In the case of service outside the Reservation completed service not less than five (5) days before the time set in the summons for appearance of the person served shall be sufficient to confer jurisdiction.

Sec. 5-10-11 Search and Seizure Warrants.

If it appears to the Court upon an affidavit sworn to by a police officer or any other person, and upon the examination of other witnesses if required by the Court, that there is probable cause to believe that a child is being detained or ill-treated in any place within the jurisdiction of the Court, the Court may issue a warrant authorizing a duly authorized police officer or probation officer to search for the child. Upon serving such warrant upon the person in possession of the premises specified in the warrant, the officer making the search may enter the house or premises, if necessary by force, in order to remove the child. The officer must thereupon take the child to the Court or to the place of detention or shelter designated by the Court in accordance with Chapter 12 hereof.

Sec. 5-10-12 Disobedience - Contempt.

Any person summoned as herein provided who, without reasonable cause, fails to appear, may be proceeded against for contempt of Court, and the Court may cause a bench warrant to be issued to produce such person in Court.

Sec. 5-10-13 Arrest of Parent, Guardian, or Custodian.

If the summons cannot be served, or if it is made to appear by affidavit or sworn statement to the Court that the person served will not obey the summons, or that serving the summons will be ineffectual, or that the welfare of the child requires that he be brought immediately into custody of the Court, a warrant may be issued for the arrest of the parent, guardian, custodian or the child, and any such warrant may be served anywhere within the jurisdiction of the Court.

XI. INVESTIGATIONS AND HEARINGS

Sec. 5-11-1 Social Investigations.

Except when clearly impractical or unwarranted, the Court shall require that a social investigation be made and a report submitted to the Court in writing in cases under § 5-3-1 of this Code in which a petition has been filed, except violations of traffic, fish and game and boating laws and ordinances.

Sec. 5-11-2 Social Investigations - Scope.

The investigation shall cover the child's home environment, history and associations, the present conditions of the child and family, and recommendations as to the child's future care. In cases involving the duty of support, the study shall include such matters as earnings, assets, financial obligations and employment.

Sec. 5-11-3 Proceedings - Civil in Nature.

Proceedings in children's cases shall be regarded as civil proceedings, with the Court exercising equitable powers. Children's cases under § 5-3-1 of this Code shall be handled separately from adult cases under § 5-3-6 hereof.

Sec. 5-11-4 Conduct of Hearings - Informal in Manner.

Hearings in children's cases shall be before the Court without a jury and may be conducted in an informal manner. The general public shall be excluded and only such persons admitted as the Judge finds have a direct and legitimate interest in the case or in the work of the Court. The child or his parents may be separately interviewed at any time at the discretion of the Court. The hearing may be continued from time to time upon leave of the court.

Sec. 5-11-5 Hearings - Record.

Whenever possible, or when an interested party to a proceeding bears the expense of such, a verbatim record made by stenographic, electrical or mechanical recording device shall be taken. The Court may, however, dispense with such record in its discretion.

Sec. 5-11-6 Records - Use in Other Courts.

Neither the record in the Tribal Juvenile Court nor any evidence given therein shall be admissible as evidence against the child in any proceeding in any other Court. No child shall be charged with any crime nor be convicted

in any Tribal Court except as provided in § 5-3-5 of this Code.

Sec. 5-11-7 Appointment of Counsel.

The Court may designate or appoint an attorney or lay counsellor to represent the Tribe in the interests of the child in any proceeding in a child's case to serve with or without compensation.

Sec. 5-11-8 Hearings - Evidence.

For the purpose of determining proper disposition of the case, and for the purpose of establishing the fact of neglect or dependency, written reports and other materials relating to the child's mental, physical, and social history and condition may be received in evidence and may be considered by the Court along with other evidence, but the Court may require that the person who wrote the report or prepared the material appear as a witness if he is reasonably available.

Sec. 5-11-9 Consolidation of Proceedings.

When more than one child is involved in a home situation which may be found to constitute neglect or dependency, or when more than one child is alleged to be involved in the same violation of law, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

Sec. 5-11-10 Amendment of Pleadings - Continuances.

When it appears during the course of any proceeding in a child's case that the evidence presented points to material facts not alleged in the petition, the Court may proceed to consider forthwith the additional or different matters raised by the evidence. In such event, the Court, on motion of any interested party or on its own motion, shall direct that the petition be amended to conform to the evidence. The Court shall grant such continuances as justice may require.

Sec. 5-11-11 Special Rules of Procedure - Traffic, Fish and Game, and Boating Violations.

The Court may adopt special rules of procedure to govern proceedings involving violations by children of traffic laws or ordinances, and violations of fish and game and boating laws or ordinances.

Sec. 5-11-12 Presence of Parents - Protection of Child.

The Court shall endeavor, through the use of the warrant of arrest if necessary, as provided in Section 5-10-13 hereof, or by other means, to insure the presence at the hearing of one or both parents or of the guardian of the child. If neither of them is present, the Court may appoint a guardian ad litem to protect the interests of the child. A guardian ad litem may also be appointed whenever necessary for the welfare of the child whether or not a parent or guardian is present at the time of such appointment.

Sec. 5-11-13 Grounds for Re-Hearing.

A parent, guardian, custodian, or next friend of any child whose status has been adjudged under this ordinance, or any adult affected by a decree in a child's proceeding hereunder, may at any time petition the Court for a new hearing on the grounds that new evidence which might affect the decree has been discovered. If it appears to the Court that there is such new evidence which might affect its decree, it shall order a new hearing and enter such decree and make such disposition of the case as is warranted by all the facts and circumstances and the best interests of the child.

Sec. 5-11-14 Maintenance of Order During Hearings.

Upon request of the Court, the Chief of the Tribal Police or his deputy or other officer shall aid the Court in maintaining order during any hearing.

XII. ARREST AND DETENTION OF CHILDREN

Sec. 5-12-1 Arrest of Child.

A child may be taken into custody by any police officer without order of the Court:

(1) When the child has violated a State, Federal, or local law or a municipal or Tribal ordinance in the presence of the officer;

(2) When there are reasonable grounds to believe that he has committed an act which if committed by an adult would be a felony or an offense under this Law and Order Code and there is reasonable cause for believing that such child before a warrant or other Court order can be obtained may:

- (a) flee the jurisdiction or conceal himself to avoid arrest; or
- (b) destroy or conceal evidence of the commission of an offense; or
- (c) injure or annoy another person or damage property belonging to another person.

(3) When he is seriously endangered by his surroundings, and immediate removal appears to be necessary for his protection;

(4) When there are reasonable grounds to believe that he has run away or escaped from his parents, guardian or custodian.

Sec. 5-12-2 Citizen's Arrest of Child.

A private citizen may take a child into custody if the circumstances are such that he could make a citizen's arrest if an adult were involved. Taking a child into custody under this section shall not be deemed an arrest.

Sec. 5-12-3 Notification of Parents - Release of Child.

When an officer or other person takes a child into custody, he shall immediately notify a parent or an adult person with whom the child lives if not the parent (custodian). Such notification shall be made by contacting the person or custodian personally or through the assistance of other officers or persons unless notification can be and is, in fact made by phone. If a parent or custodian cannot, after due diligence, be found or contacted, then such notice shall be given to the nearest known relative or to an adult person who is well acquainted with the child. The parent or person notified shall be told why the child has been taken into custody and where the child is being held. The child shall then be released to the care of his parents or other responsible adult unless his immediate welfare or the protection of the community requires that he be detained. Before the child is released, the parent or other person to whom the child is released may be required by the person holding the child to sign a written promise, on forms supplied by the Courts, to bring the child to the Court at the time set or to be set by the Court.

Sec. 5-12-4 Detention of Child.

A child shall not be detained by the Tribal Police or in a police station any longer than is reasonably necessary to obtain his name, age, residence and other identifying

information, and to contact his parents, guardian or custodian. If he is not thereupon released as provided in the preceding section, he must be taken without unnecessary delay to the Court or the place of detention or shelter designated by the Court.

Sec. 5-12-5 Detention - Report to Court.

The officer or other person who takes a child to a detention or shelter facility must notify the Court or a probation officer at the earliest opportunity that the child has been taken into custody and where he was taken; he shall also promptly file with the referee or the Court a brief written report stating the facts which bring the child within the jurisdiction of the Tribal Juvenile Court and give the reason why the child was not released.

Sec. 5-13-6 Restrictions on Detention.

No child shall be placed or kept in a detention or shelter facility pending Court proceedings unless it is determined by the Court that it would be unsafe for the child to leave him in the custody of his parents, guardian or custodian.

Sec. 5-12-7 Detention - Discretion of Judge.

After immediate investigation by a duly authorized officer of the Court, the Judge or other authorized officer shall, upon written promise to bring the child to the Court at a set time or without restriction, order the release of the child to his parents, guardian or custodian if it is found that he can be safely left in their care. If it is found that it is not safe to release the child, the Judge or authorized officer may order that the child be held in the facility or be placed in another appropriate facility, subject to further order of the Court.

XIII. DISPOSITION OF CASES

Sec. 5-13-1 Findings of Jurisdictional Facts - Disposition of Case.

When a child is found to come within provisions of section § 5-3-1 of this Code, the Court shall so adjudicate, and make findings of the facts upon which it bases its jurisdiction over the child, and shall enter its decree. Upon such adjudication, the Court may make the following dispositions by Court order:

(1) Place the child on probation or under protective supervision (as these terms are defined herein) in his own home, upon conditions determined by the Court;

(2) Place the child in the legal custody of a relative or other suitable person, with or without probation or protective supervision;

(3) Vest legal custody of the child in the State of South Dakota, Division of Social Services or other public agency, department, or institution, or in a child placement agency as defined herein, for placement in a foster family home or other facility;

(4) Commit the child to an authorized industrial school, state training school, or other training or corrective institution authorized to receive Indian children;

(5) Commit the child to an institution or facility for short-term confinement or for the purpose of study and evaluation;

(6) Place the child in an approved Indian boarding school, on a ranch, a forestry camp, or other camp or similar facility, for care and for work, if possible, provided that the person, agency or association operating the facility has been approved by the Tribal Council, or has otherwise complied with all applicable Tribal, State or local laws. The child placed in a forestry camp or similar facility may be required to work on or off the grounds of such facility, and may be paid wages, all subject to the approval of, and under conditions set by the Court;

(7) Order that the child be required to make restitution for damage or loss caused by his wrongful acts, and may impose fines not to exceed \$500.00;

(8) Arrange for employment or work programs to enable children to fulfill their obligations under sub-section 7 of this Section, and for other purposes when deemed desirable by the Court;

(9) In cases of violations of traffic laws or ordinances, the Court may, in addition to any other disposition, restrain the child from driving for such period of time as the Court deems necessary, and may take possession of the child's driver's license;

(10) Order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that he receive other special care, and for such purposes may place the child in a hospital or other suitable facility;

(11) Appoint a guardian for the child where it appears necessary to do so in the interest of the child, and may appoint a public or private institution or agency in which legal custody of the child is vested, as such guardian.

Sec. 5-13-2 Primary Consideration - Welfare of the Child.

(1) In placing a child under the guardianship or legal custody of an institution or of a private agency or institution, the Court shall give primary consideration to the welfare of the child, but whenever practicable, may take into consideration the religious references of the child and his parents, and shall consider the factors set forth in Section 5-5-7 above.

(2) No child found to come within the jurisdiction of the Court under Section 5-3-1 shall be committed to or placed in an institution or facility established for the care and rehabilitation of delinquent children unless such child is found delinquent based upon the commission of an act that would be a crime or offense if committed by an adult or unless said child has once before within a period of six months been found to be within the jurisdiction of the Court under Section 5-3-1 (3).

Sec. 5-13-3 Establishment of Conditions by Court.

Under a decree entered pursuant to Section 5-3-1 of this Code, the Court may make an order setting forth reasonable conditions to be complied with by the parents, the child, his custodian, or any other person who has been made a party to the proceedings, including, but not limited to restrictions on visitations by the parents or one parent, restrictions on the child's associates, occupation and other activities and requirements to be observed by the parents or custodian.

Sec. 5-13-4 Hospitalization of Child.

With respect to a child within the jurisdiction of the Court under Section 5-3-1 hereof, the Court may order hospitalization in an authorized hospital if the Court finds, upon due notice to the parents or guardian and after a special hearing conducted in accordance with applicable laws and regulations, that the child is (1) mentally ill, and (2) because of his illness is likely to injure himself or others if allowed to remain at liberty or is in need of treatment.

Sec. 5-13-5 Commitment to Training School.

The Court may make an order committing a child within its jurisdiction to an authorized training school if the child has been found mentally deficient in accordance with the provisions of applicable law and regulation.

Sec. 5-13-6 Termination of Parental Rights.

The Court may terminate all parental rights, provided it complies with the provisions of Chapter 15 hereof.

Sec. 5-13-7 Other Disposition of Cases.

The Court may make any other reasonable orders which are for the best interests of the child or are required for the protection of the public, except that no child may be committed to prison or any child under 16 years of age to jail upon adjudication under this Code. The Court may combine several of the above listed modes of disposition where they are compatible.

Sec. 5-13-8 Review of Cases.

An order under this Chapter for the placement of a child with an individual or an agency shall include a date certain for review of the case by the Court, with a new date to be set upon each review.

XIV. JUDGMENTS AND ORDERS

Sec. 5-14-1 Judgments - Inoperative After Age 21.

No judgment, order or decree of the Tribal Juvenile Court shall operate after the child becomes twenty-one years of age.

Sec. 5-14-2 Orders - Termination - Renewals.

An order vesting legal custody of a child in an individual, agency, or institution shall be for an indeterminate period, but shall not remain in force longer than two years from the date it is entered unless, within the two-year period, the Court, after notice to the parties and a hearing, shall have reviewed the order and found its renewal necessary to safeguard the welfare of the child or the public interest, in which case the order may be extended for up to two more years. The findings of the Court and the reasons therefor shall be entered with the review order or with the order denying renewal.

Sec. 5-14-3 Orders - Modifications.

The Court may modify or set aside any order or decree made by it; but no modification of an order placing a child on probation shall be made upon an alleged violation of the terms of probation until there has been a hearing after due notice to all persons concerned. Notice and a hearing shall also be required in any other case in which the effect of modifying or setting aside an order is to deprive a parent of the legal custody of the child, to place the child in an institution or agency, or to transfer the child from one institution or agency to another, except that transfer from one foster home to another may be effected without notice and hearing.

Sec. 5-14-4 Orders of Termination - Notice.

Notice of an order terminating probation or protective supervision shall be given to the parents, guardian, custodian, and where appropriate, to the child.

Sec. 5-14-5 Court Adjudication - Not Criminal in Nature.

An adjudication by the Tribal Juvenile Court that a child is within its jurisdiction under Section 5-3-1 of this Ordinance shall not be deemed a conviction of an offense.

XV. CUSTODY OF CHILDREN

Sec. 5-15-1 Parent's Preferred Right to Custody.

Before depriving any parent of the custody of his or her child, the Court shall give due consideration to the preferred right of parents to the custody of their children, as expressed in Section 5-1-1 hereof, and shall not transfer custody to another person, agency or institution unless the Court finds from all the circumstances in the case that the welfare of the child or the public interest requires that the child be taken from his home.

Sec. 5-15-2 Termination of Parental Rights.

The Court may decree a termination of parental rights as defined herein concerning a child within the preview of Section 5-3-1 hereof, if the provisions of Chapter 15 are complied with. The rights of one parent may be terminated without affecting the rights of the other parent.

Sec. 5-15-3 Parental Rights - Grounds for Termination.

The rights of the parent or parents may be terminated if the Court finds:

(1) That the parent or parents are unfit and incompetent by reason of acts or failures to act which are seriously detrimental to the child; or

(2) That the parent or parents have abandoned the child. It shall be prima facie evidence of abandonment that the parent or parents, although having legal custody of the child, have surrendered physical custody of the child, and for a period of one year following such surrender have not by some affirmative act manifested to the child or to the person having the physical custody of the child in intention to resume physical custody or to make arrangements for the care of the child; or

(3) That after a period of trial, during which the child was kept in his own home under protective supervision or probation, or during which the child was returned to live in his own home, the parent or parents substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection.

Sec. 5-15-4 Procedure for Terminating Parental Rights.

A termination of parental rights may be ordered only after a hearing is held specifically on the question of terminating the rights of the parent or parents. A verbatim record of the proceedings must be taken and the parties must be advised as to their right to counsel. No such hearing shall be held earlier than 10 days after service of summons is completed inside or outside of the state in accordance with Chapter 10 hereof. The summons must contain a statement to the effect that the rights of the parent or parents are proposed to be permanently terminated in the proceedings. The statement may be made in the summons originally issued in the proceedings or in a separate summons subsequently issued.

Sec. 5-15-5 Parental Rights - Order Terminating - Contents - Appeals.

Every order terminating the rights of one or both parents shall recite the facts upon which the Court bases its jurisdiction over the child and shall include the findings upon which the decree is based. It shall further

state that an appeal must be taken within three months from the entry of the order, or the order permanently terminates all rights of the parents or the parent involved.

Sec. 5-15-6 Action of Court After Termination of Parental Rights.

Upon the entry of an order terminating the rights of the parent or parents, the Court may (a) place the child for adoption under applicable law and regulation; or (b) make any other disposition of the child authorized under Chapter 13 hereof.

Sec. 5-15-7 Parental Rights - Right of Non-Terminated Parent.

If the rights of only one parent have been terminated, the right of the other parent to consent to adoption is not affected by an order placing the child for adoption as provided in the preceding section.

Sec. 5-15-8 Parental Rights - Voluntary Surrender.

Nothing contained in this section shall preclude a parent or parents from surrendering permanent legal custody voluntarily by instrument in writing, duly acknowledged, for purposes of adoption, and in accordance with applicable laws and regulations.

Sec. 5-15-9 Proceedings to Return Custody to Parent, Guardian, Etc.

A parent, guardian, or next friend of a child whose legal custody has been transferred by the Court to an individual agency or institution may petition the Court for restoration of custody or other modification or revocation of the order on the grounds that a change of circumstances has occurred which requires such modification or revocation in the best interests of the child or the public. The Court shall make preliminary investigation, and may dismiss the petition if it finds that the alleged changed of circumstances, if proved, would not affect the decree. If the Court finds that a further examination of the facts should be had, or if the Court on its own motion determines that the order should be reviewed, it shall conduct a hearing upon due notice to all persons concerned, and may thereupon enter an order continuing, modifying, or revoking the order.

Sec. 5-15-10 Limitations on Parent's Right to Regain Custody.

No petition by a parent may be filed under the preceding Section after his or her parental rights have been terminated in accordance with this chapter.

Sec. 5-15-11 Custody - Rights and Duties.

An agency granted legal custody shall have the right to determine where and with whom the child shall live, provided that placement of the child does not remove him from the Reservation without Court approval. An individual granted legal custody shall exercise the rights and responsibilities involved in legal custody personally, unless otherwise authorized by the Court.

Sec. 5-15-12 Custody - Agency - Duty of Court.

Whenever legal custody of a child is vested in an institution or agency, the Court shall transmit with the court order copies of any reports and other information pertinent to the care and treatment of the child. The institution or agency shall give the Court any information concerning the child that the Court may at any time require.

Sec. 5-15-13 Modification and Revocation of Custody Orders.

An individual, agency, or institution vested with legal custody of a child may petition the Court for modification or revocation of the custody order on the grounds that such change is necessary for the welfare of the child or in the public interest. The Court shall proceed upon such petition in the same manner as upon a petition filed under Section 5-15-9 hereof.

XVI. SUPPORT OF CHILDREN

Sec. 5-16-1 By Parents.

When legal custody of a child is vested by the Court in an individual or agency other than his parents the Court may in the same or any subsequent proceeding inquire into the ability of the parents, a parent, or any other person who may be obligated, to support the child and to pay any other expenses of the child, including the expense of any medical, psychiatric, or psychological examination or treatment provided under order of the Court. The Court may, after due notice and a hearing on

the matter, require such person or persons to pay the whole or part of such support and expenses, depending on their financial resources and other demands on their funds. The amounts so required to be paid shall be paid at such intervals as the Court may direct, and unless otherwise ordered, payment is to be made to the clerk of the Tribal Juvenile Court for transmission to the person or agency having legal custody of the child or to whom compensation is due. The clerk of the Court shall have authority to receive periodic payments towards the care and maintenance of the child, such as social security payments made in the name of or for the benefit of the child.

Sec. 5-16-2 Procedure for Payment.

No court order issued under the preceding Section against a parent or other person shall be entered unless summons has been served on the Reservation or a voluntary appearance is made or a waiver of service given. The summons shall specify that a hearing with respect to the financial support of the child will be held.

Sec. 5-16-3 Enforcement of Support Orders.

(1) An order entered under Section 5-16-1 against a parent or other person may be enforced by contempt proceedings, and shall also have the affect of a civil judgment at law. In addition to other remedies, the Court may issue an order to any employer, trustee, financial agency, or other person, firm, or corporation on the Reservation, indebted to any other person ordered to make payment under this Code, to withhold and pay over to the clerk of the Court moneys due or to become due not in excess of the lesser of the following:

- (a) the amount ordered to be paid by the Court under §5-16-1 hereof, or
- (b) one-fourth of the amount due or becoming due the parent or other person at each regular or usual payday or day of disbursement.

(2) A copy of such order shall, if possible, be served on the parents or either of them adjudged liable and either the parents or parent or the indebted party may request a hearing to determine the propriety of the order or the extent of the indebtedness.

(3) No property of the parents, or either of them, shall be exempt from execution to enforce collection of the amounts ordered to be paid by the Court under this Section, except that real property held in trust by the United States shall be subject to the conditions of the trust.

Sec. 5-16-4 Support From Other Sources.

If the Court finds that the parents are unable to pay for full or partial support, examinations, treatment, and other expenses of the child and that no other provision for the payment of such support and expenses has been made, or if the parents or other person obligated to pay under a court order issued under this Chapter have failed to make such payment, or if summons can not be served on the Reservation upon the parents or other person under Section 5-16-2 hereof, the Court shall request any other public or tribal agency or department of the United States or the State of South Dakota with funds available for such purposes to pay for such support and other expenses and if such department or agency consents, it shall be so ordered by the Court.

Sec. 5-16-5 Payments Directly to Agency - Report to Court - Visits.

Payment for child support may be made to a non-governmental agency in whom the Court vests legal custody, provided that the agency shall make periodic reports to the Court concerning the care and treatment the child is receiving and his response to such treatment. Such reports shall be made at such intervals as the Court may direct, and shall be made with respect to each child at least every 6 months. The agency shall also afford an opportunity for a representative of the Court to visit the child as frequently as the Court deems necessary.

XVII. APPEALS

Sec. 5-17-1 Procedure.

An appeal to the Tribal Appellate Court may be taken from any order, decree, or judgment of the Tribal Juvenile Court. Such appeal shall be taken in the same manner in which appeals are taken from judgments or decrees of the Tribal Court. Except as provided in Section 5-15-5 of this Code, the appeal must be taken within one month from the entry of the order, decree, or judgment appealed from.

Sec. 5-17-2 Stay Pending Appeal.

Unless the Court stays its order, the pendency of an appeal shall not stay the order or decree appealed from in a child's case. Where the order or decree appealed from directs a change of legal custody of a child, the appeal shall be heard and decided at the earliest practicable time. The name of the child shall not appear on the record on appeal.

XVIII. MISCELLANEOUS PROVISION

Sec. 5-18-1 Disobedience - Contempt.

Any person who willfully violates or refuses to obey any order of the Court, may be proceeded against for contempt of Court.

Sec. 5-18-2 Payment of Fines - Penalties, Etc.

Except as otherwise provided by law, all fines, penalties, and forfeitures imposed and collected by the Court shall be paid out as the Tribal Council shall direct.

Sec. 5-18-3 Filing Fees - Witness Fees - Travel Expenses, Etc. - By Whom Payable.

There shall be no fee for filing a petition under Section 5-3-1 (1) and (2) of this Code, nor shall any fees be charged by any tribal officer for the service of process or for attendance in court in any such proceedings. Witness fees shall be payable in accordance with Section 5-10-7 of this Code. Such fees and expenses, the cost of publication of summons, and the expense of a trial of an adult person, when approved by the Court, shall be paid by the Tribe.

Sec. 5-18-4 Records To Be Kept - Accessibility.

The Court shall keep such records as may be required by the Judge. Records in children's cases shall be withheld from public inspection; but the court records shall be open to inspection by the parents or guardian, other parties in the case, the attorneys, and agencies to which custody of a child has been transferred; and with the consent of the Judge, court records may be inspected by the child, by persons having legitimate interests in the proceedings, and by persons conducting pertinent research studies. Probation records and reports of social and clinical studies shall not be open to inspection, except by consent of the Court.

Sec. 5-18-5 Short Title.

This Code shall be known and may be cited as the
Juvenile Code.

TITLE VI
CHEYENNE RIVER SIOUX TRIBE
TRAFFIC CODE

Sec. 6-1-1 South Dakota Traffic Code and Insurance
Provisions Incorporated.

(1) The following provisions of the South Dakota Code as presently constituted or hereafter amended, shall apply to all persons subject to the jurisdiction of the Cheyenne River Sioux Tribe.

(a) Chapter 15, 17, 18, 19, 20, 20(a), 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35 and 36 of Title 32 of the South Dakota Code, 1976 Revision.

(2) Amendments, additions, or deletions to or from such provisions by the State of South Dakota after the enactment of this Law and Order Code shall become a part hereof for all purposes unless the Cheyenne River Sioux Tribal Council by ordinance or resolution specifically provides otherwise.

(3) Punishment for violation of such provisions shall be as follows:

(a) Failure of the driver of an involved vehicle to stay at the scene of an accident involving injury or death, shall be a Class A offense.

(b) Driving under the influence of intoxicating liquor, reckless driving, and failure to stop at the command of a Police Officer shall be Class B offenses. Reckless driving shall be considered to be a lesser included offense of the offense of driving under the influence of intoxicating liquor.

(c) All other violations shall be Class C offenses.

(d) All provisions for the suspension or revocation of drivers' licenses may be imposed in addition to any other punishment.

(4) Any of such provisions which by their nature would not apply to the Cheyenne River Sioux Tribe or the Reservation are not incorporated herein.

Sec. 6-1-2 Citation in Lieu of Arrest.

In the case of violations of the Traffic Code which are punishable as Class C offenses in which the person charged resides within the territorial jurisdiction of the Cheyenne River Sioux Tribe, the accused shall not be taken into custody if he voluntarily signs a promise, printed on the citation, to appear before the Tribal Court, plus certification that he has had no other traffic citations or arrests within the previous six (6) months, and, if the judgment of the police officer involved, no arrest is necessary to protect the peace and safety of the offender, the Reservation, and its residents.

Sec. 6-1-3 Fine Schedule in Traffic Cases.

(1) Notwithstanding Rule 2 of the Cheyenne River Rules of Criminal Procedure, in the case of violations of the Traffic Code which are punishable as Class C offenses, the Tribal Court may adopt a schedule of fines which may be paid in lieu of an appearance before the Court, to discharge the accused person's liability for such violation.

(2) The payment of set fine in lieu of Court appearance, as described next above, shall not be available to any person who has plead or been found guilty of any traffic offense or paid such a fine for another traffic offense within the preceding six months. The Tribal Court may by rule direct the keeping of traffic records or the certification by the accused of his lack of prior traffic offenses, or both.

Sec. 6-1-4 Recreational Vehicles.

The operation of snow mobiles and other all-terrain or recreational vehicles other than on public or Tribal roads or highways, shall be governed by rules, regulations, and/or proclamations established under Title XIII of this Law and Order Code.

TITLE VII

CHEYENNE RIVER SIOUX TRIBE RULES OF CIVIL PROCEDURE

I. GENERAL PROVISIONS

Rule 1. Scope of Rules.

(a) Scope. Except when different rules prescribed in this Code specifically apply, these rules shall govern the procedure in the tribal and appellate courts of the Cheyenne River Sioux Tribe in all actions, suits and proceedings of a civil nature, in all proceedings established by law, and in criminal matters to the extent no different rule is specified.

(b) Construction. These rules shall be liberally construed to secure a just, speedy, and inexpensive determination of every action.

(c) One Form of Action. There shall be one form of action known, except in criminal or juvenile proceedings, as a "civil action".

(d) Collateral References. Any procedures or matters not specifically set forth herein shall be handled in accordance with the Federal Rules of Civil Procedure insofar as such are not inconsistent with these rules, and with general principles of fairness and justice as prescribed and interpreted by the Court.

II. COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS

Rule 2. Commencement of Action; Service of Process.

(a) Commencement of Action. A civil action is commenced by filing a written complaint with the Clerk of the Tribal Court. The court shall have jurisdiction from such time as both the complaint is filed and properly served upon the defendant and a return of service is filed with the Clerk.

(b) Service of Process. Service of process shall consist of delivering to the party served a copy of the complaint along with the summons, which need not be

issued by the Judge or Clerk, which advised the defendant that he is required to answer the complaint within 30 days or a default judgment will be entered against him.

(1) The return of service shall be endorsed with the name of the person serving and the date, time, and place of service and shall be filed with the Clerk

(2) Service may be made on a party by delivery of the required papers to the party himself or upon some person of suitable age and discretion over 14 years old at the party's house or principal place of business, or an officer, managing agent, employee, or partner of a non-individual party.

(3) Service by publication may be made upon order of the court for good cause shown by publishing the contents of the summons in a local newspaper of general circulation at least once per week for four weeks and by leaving an extra copy of the complaint or paper with the court for the party.

(4) Service may be made by any law enforcement officer or tribal member who is a resident of the Cheyenne River Sioux Reservation, not a party, 18 years of age or older.

(5) Service upon a resident otherwise subject to the jurisdiction of the Cheyenne River Sioux Tribal Court may be made anywhere in the United States; otherwise, service shall be made within the exterior boundaries of the Cheyenne River Sioux Indian Reservation.

(6) If a person personally refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.

(c) All papers required to be filed shall be served as under this rule or, except for the complaint, may be served on the counselor or attorney of a party. Service of all papers except the complaint may be made by mail, First Class postage pre-paid and properly addressed.

Rule 3. Time.

(a) Computation. In computing any period of time set forth herein, the day that the period is to commence

from shall not be counted and the last day of the period shall be counted; provided however, that any time period under 7 days will not include intermediate Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday or legal holiday will be deemed to end on the next day which is not a Saturday, Sunday or legal holiday.

(b) Enlargement. The court for good cause shown may enlarge the prescribed period of time within which any required act may be done.

(c) Notice of Motions. Written motions and notice of hearing thereon, other than one which may be heard ex parte, shall be served not later than 5 days prior to the time specified for hearing.

(d) Service by Mail. Whenever service is accomplished by mail, three days shall be added to the prescribed period of time, but such additional time shall not cause Saturdays, Sundays or legal holidays to be counted in the time period if they would not otherwise have been counted.

Rule 4. Pleadings, Motions and Orders.

(a) Pleadings. There shall be a complaint and an answer; plus a responsive pleading shall be allowed whenever, by cross claim, counterclaim or otherwise, a party is first claimed against unless the court shall otherwise order. The court may grant additional leave to plead in the interest of narrowing and defining issues or as justice may require.

(b) Motions and Orders.

(1) Motions. An application to the court for an order shall be by motion and shall be in writing, unless made orally during a hearing or trial, and shall set forth the relief or order sought and the grounds therefore stated with particularity. A motion and notice of motion may be set forth together.

(2) Orders. An order includes every direction of the court whether included in a judgment or not, and may not be made without notice to adverse parties nor vacated or modified without notice, except as provided herein.

(3) Hearings on Motions and Orders. A motion or hearing on an order shall be automatically continued if the judge before whom it was to be heard is unable to hear it on the day specified and no other judge is available to hear it.

(4) No court order shall issue unless a civil action has been commenced as provided in Rule 2(a).

Rule 5. General Rules of Pleading.

(a) Claims for relief. A pleading which sets forth a claim for affirmative relief shall contain:

(1) A short, plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction over the matter.

(2) A short, plain statement of the claim showing that the pleader is entitled to relief; and

(3) A demand for judgment for the relief to which the pleader considers himself entitled. Such claim for relief can be in the alternative or for several types of relief.

(b) Defenses and Denials. A party shall state in plain, concise terms the grounds upon which he bases his defense to claims pleaded against him, and shall admit or deny the claims and statements upon which the adverse party relies. If he is without information or knowledge regarding a statement or claim, he shall so state and such shall be deemed to be a denial. Denials shall fairly meet the substance of the claims or statements denied and may be made as to specified parts but not all of a claim, statement, or averment. A general denial shall not be made unless the party could in good faith deny each and every claim covered thereby. A claim to which a responsive pleading is required, except for amount of damages, shall be deemed admitted unless denied; if no responsive pleading is allowed the claims of the adverse party shall be deemed denied.

(c) General Content of Claims and Defenses. Claims and defenses shall be simply, concisely, and directly stated, but may be in alternative or hypothetical form, on one or several counts or defenses, need not be consistent with one another, and may be based on legal or equitable grounds or both.

(d) Affirmative Defenses. Matters constituting an affirmative defense or avoidance shall be affirmatively set forth. When a party has mistakenly designated a defense as a counterclaim or vice versa, the court may treat the pleading as if it had been properly designated if justice so requires.

(e) Construction of Pleadings. All pleadings shall be construed so as to do substantial justice.

Rule 6. Form of Pleadings.

(a) Caption. Every pleading shall contain a caption heading, the name of the court, the title of the action, the court file number (if known) and a designation as to what kind of pleading it is. All pleadings shall contain the names of the parties except the name of the first party on each side may be used on all pleadings except the complaint.

(b) Paragraphs. All averments of claim or defense shall be set forth in separate numbered paragraphs each of which is limited, as nearly as possible, to a single circumstance. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses.

(c) Exhibits; Adoption by Reference. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of a written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(d) Paper Used in Pleadings. Insofar as is possible, pleadings and other papers filed in any action shall be on legal size paper, double spaced, except for matters customarily single spaced, contain at least 2-inch top margin and a 1-inch left side margin, and contain the court file number on the first page thereof. Substantial compliance with this rule will be sufficient for all parties not represented by a professional attorney.

Rule 7. Defenses and Objections.

(a) When Presented. A defendant or other party against whom a claim has been made for affirmative relief shall have 30 days from the date of service upon him to answer or respond to the claim.

(b) Motions. Motions to dismiss or to make the opposing parties' pleadings more definite may be made prior to answering a claim and an answer will not be due until 10 days after the disposition of the motion by the Court.

Rule 8. Counterclaim or Crossclaim.

(a) Counterclaim. A party against whom a claim is made may assert in his answer any claims he has against the party claiming against him and both claims shall be resolved at trial.

(b) Crossclaim. A party against whom a claim is made may assert any claim he has against a co-party and have such claim resolved at trial.

(c) Third Party Claim. A party against whom a claim is made may complain against a third party who is or may be liable for payment or performance of the claim of the opposing party and have such complaint resolved at trial.

Rule 9. Amendment of Pleadings.

(a) Amendment Before Trial. A party may amend his pleadings once before the opposing party has replied or if no reply is required, not less than 20 days before the case is scheduled for trial. The opposing party may respond, if appropriate, and the trial date rescheduled if necessary. Other amendments shall be allowed only upon motion and order of the Court.

(b) At Trial. When issues or evidence not raised in the pleadings are heard at trial, the judgment may conform to such issues or evidence without the necessity of amending the pleadings.

Rule 10. Parties.

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest, except a personal representative or other person in a fiduciary position can sue in his own name without joining the party for whose benefit the action is maintained.

(b) Guardian Ad Litem. When an infant, or insane, or incompetent person who has not had a general guardian appointed is a party, the Court shall appoint a guardian ad litem to represent such person in the suit or action.

(c) Joinder of Parties. To the greatest extent possible given the jurisdiction of the Cheyenne River Sioux Tribal Court, all persons or parties interested in a particular action may be joined in the action, but failure to join a party over whom the Court has no jurisdiction will not require dismissal of the action unless it would be impossible to reach a just result without such party; otherwise, the failure to join a party may be taken into account to assure that justice is done.

Rule 11. Intervention.

A person may intervene and be treated in all respects as a party to an action in cases in which property in which he has an interest may be affected or a question of law or fact common to a claim of his may be litigated.

Rule 12. Substitution of Parties.

If a party dies or becomes incompetent or transfers his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

Rule 13. Discovery.

(a) Interrogatories. A party may submit written interrogatories to any other party who must answer them in writing, under oath, within 35 days of receipt of such.

(b) Depositions. A party may take the oral deposition of an adverse party or non-party witness under oath upon not less than 10 days notice, specifying the time and place on the reservation where such will occur.

(c) Production, Entry, or Inspection. A party may request another party to produce any documents or things in his custody or possession for inspection or copying or request permission to enter and inspect property reasonably related to the case, and the opposing party shall within 35 days reply as to whether or not such will be allowed and if not, why not.

(d) Scope of Discovery. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, whether or not such would be admissible at trial, if such appears reasonably calculated to lead to the discovery of admissible evidence; except that discovery may not be had of the work product of a party's counselor or attorney.

(e) Protective Order. A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harrassment, embarrassment, oppression, or undue burden or expense, and the court may order that the discovery cease or proceed only upon specified conditions.

(f) Failure to Make Discovery. If a party fails to respond or appear for discovery as provided in this rule, the opposing party may move for an order to compel the defaulting party to perform and the court may award costs to the non-defaulting party. If a party fails to perform after being ordered to do so by the Court, the Court may, upon motion, order that a certain fact, claim, or defense be deemed established or strike part of a claim or defense, or dismiss or render a judgment by default against the non-complying party in an aggravated case.

(g) Use of Discovery. Answers to interrogatories and depositions may be used in a motion, hearing or at trial to impeach or contradict the testimony of the person discovered, or by an adverse party for any purpose.

Rule 14. Jury Trials.

(a) When Allowed. Trials of all civil actions shall be to the court without a jury unless a party to the action files a request for a jury trial and pays a fee of \$20.00 not less than 35 days prior to the scheduled date of trial. A judge may, upon good cause shown, waive pre-payment of the required fee.

(b) Issues Triable. Unless the requesting party specifies otherwise, all factual issues properly triable by a jury shall be decided by the jury at trial. A party requesting a jury trial may specify only those issues he wants tried to the jury, and any other party may specify, not less than 15 days before the date scheduled for trial, any other issues he wishes to be so tried. Once any or all issues of a case have been requested for a jury trial, such request may not be withdrawn without the consent of all of the parties.

(c) Designation by Judge.

(1) A judge may, upon his own motion, order the trial by a jury of any or all of the factual issues of a case regardless of whether or not the parties have requested such.

(2) A judge may, upon motion of any party or its own initiative, find that some or all of the issues designated for jury trial are not properly triable to a jury, and order that no jury trial be held on such issues.

(3) A judge may hear and decide an issue or issues without a jury if either party to an issue fails to appear at trial, regardless of any request made for a jury trial on such issues.

Rule 15. Assigning Cases for Trial.

(a) Assignment of Judge and Date. The Chief Judge shall determine which judge shall hear a case, and shall provide by rule for the placing of cases on the court calendar with or without the request of any party, provided all parties are given adequate notice of trial dates.

(b) Postponement. Upon motion of a party, the court may in its discretion, and upon such terms as it deems just, including the payment of any cost occasioned by such postponement, postpone a trial or proceeding upon good cause shown.

Rule 16. Dismissal of Actions.

(a) Voluntary Dismissal. Prior to the responsive pleading of a party against whom a claim has been made or motion to dismiss or for summary judgment on such claim, the party making the claim may file a notice of dismissal and his claim shall be deemed dismissed without prejudice. In all other circumstances a party may move the court to dismiss his own claim and the court shall do so either with or without prejudice as is just and proper given the stage of the proceedings, provided, however, if a cross-claim or counterclaim has been filed against the moving party, the judge shall dismiss the claim only with the consent of the adverse party or only if it appears that the other party can prosecute his claim independently without undue additional hardship.

(b) Involuntary Dismissal. A party against whom a claim has been made may move the court to dismiss the claim of the adverse party upon any of the following grounds:

(1) Failure of the adverse party to prosecute his claim;

(2) Failure of the adverse party to comply substantially with these rules;

(3) Failure of the adverse party to comply with an order of the court;

(4) At the close of the presentation of the other party's evidence and without prejudicing his own right to present evidence, failure of the opposing party to establish a right to relief based on the facts and law presented; or

(5) Whenever dismissal appears proper based upon a failure to prove a claim.

(c) Such dismissal shall be deemed an adjudication of the merits of the issue dismissed unless the court shall, for good cause shown, order otherwise. The Court may postpone ruling on a motion to dismiss for failure to establish a right to any relief until the close of all the evidence.

(d) The court may order a party moving to dismiss his own claim to pay the costs of the adverse party if the proceeding has progressed beyond the pleading stage, and may order payment of costs in other circumstances where such is deemed appropriate.

Rule 17. Consolidation; Separate Trials.

(a) Consolidation. The court may, upon motion of any party or its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating the actions or if such will tend to avoid unnecessary cost or delay.

(b) Separate Trials. The court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

Rule 18. Evidence.

(a) Form and Admissibility. At all hearings and trials, the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules. All evidence admissible under the new South Dakota Rules of Evidence or as specified in this Law and Order Code shall be admissible and the competency of witnesses to testify shall be similarly determined.

(b) Examination and Cross Examination.

(1) A party may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate.

(2) A party may call any person to be a witness and examine any witness so called on any matter relevant to the action. A party may impeach his own witness.

(3) Cross examination shall be limited to the general scope of direct examination; provided, however, that full examination of all witnesses shall be allowed on direct or cross examination to assure complete development of all relevant facts.

(c) Physical Evidence. Written documents and other physical evidence shall be received upon being identified, authenticated, and showed to be relevant to the action.

(d) Official Documents. Official documents or an official law, record or copy thereof may be admitted into evidence upon the testimony of an official having custody or official knowledge thereof or without such testimony if the document or record or copy thereof is accompanied by a certificate identifying such thing and stating that it is a true and correct representation of what it purports to be.

(e) Record of Excluded Evidence. In an action tried to a jury, excluded evidence may upon request be included in the record for purposes of appeal and excluded oral testimony shall be put into evidence by means of an offer of proof made out of the hearing of the jury. In an action tried only to the court, the judge may receive such excluded testimony into the record.

Rule 19. Subpoenas.

(a) Issuance. Subpoenas for attendance of witnesses or production of documents or things shall be issued and served as provided elsewhere in this Code.

(b) Failure to Appear. A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of court.

(c) Subpoena Unnecessary. A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena.

Rule 20. Jurors.

(a) Number of Jurors; Alternate. There shall be six jurors chosen to hear a case plus the Court may allow one additional juror to be chosen as an alternate juror. In the event that an alternate juror is chosen and hears the case, he shall be dismissed prior to the jury's deliberation if not needed, and treated like a regular juror if needed.

(b) Examination of Jurors. The court shall permit the parties or their counsel (but not both) to conduct the examination of prospective jurors and may itself examine the jurors.

(c) Challenges.

(1) A challenge is an objection made to a potential trial juror. Either party may challenge jurors but where there are several parties on either side, they must join in a challenge before it can be made.

(2) Challenges to jurors are either peremptory or for cause. Each party or side shall be entitled to three peremptory challenges.

(3) Challenges for cause shall be made against potential jurors on the grounds that they are not entitled or qualified to be jurors, they are familiar with the case, have formed opinions regarding the case, or if for any other reason it appears likely or reasonably possible that they will not be able to render a fair, impartial verdict. The judge may take evidence relative to a challenge for cause and shall in any event render a decision thereon.

(d) Selection of Jury. The clerk shall draw lots to determine potential jurors and shall replace jurors for whom a challenge for cause is sustained until a full panel is passed for cause. Upon exercise of peremptory challenges the clerk shall administer the oath to the jurors selected for the trial, the form of which shall be prescribed by rule of the Court.

(e) Discharge of Juror. If, after the proceedings begin and before a verdict is reached, a juror becomes unable or disqualified to perform his duty, the alternate juror shall take his place; if there is no alternate juror the parties may agree to complete the action with the other jurors. If no agreement can be reached, the judge

shall discharge the jury and the case shall be tried with a new jury.

(f) View of Jury. The Court may, for good cause shown, allow the jury to view the property or place of occurrence of a disputed or otherwise relevant event.

(g) Separation of the Jury. Any time prior to their verdict when the jurors are allowed to leave the courtroom, the judge shall admonish them not to converse with or listen to any other person on the subject of the trial and further admonish them not to form or express an opinion on the case until the case is submitted to the jury for their decision.

(h) Deliberation. Once the case is submitted to them, the jury shall retire to deliberate in private under the charge of an officer of the court called the bailiff, who will refrain from communicating with them except to inquire whether they have reached a verdict, and he shall prevent others from improperly communicating with the jury.

(i) Things Taken by Jury. The jury may take with them when deliberating any of the following:

- (1) the Court's instructions;
- (2) papers or things received in evidence as exhibits;
- (3) notes taken by the jurors themselves, but not notes taken by non-jurors;

(j) Additional Instructions. If after the jury retires, there is some question on an instruction or other point of law or disagreement regarding the testimony, the jury may request additional instructions from the Court, such to be given on the record after notice to the parties or their counsel.

(k) No Verdict. If the jury is discharged before rendering their verdict or for any reason prevented from giving a verdict, the action shall be retired.

(l) Declaration of the Verdict. When all or at least five of the six jury members agree on a verdict, they shall so inform the bailiff who shall notify the Court. The jury shall be conducted into the courtroom and the Clerk shall call the jury roll; the verdict shall be given in writing to the clerk and then read by the clerk to the court; inquiry shall be made by the court to the jury foreman as to whether such is their verdict. Either party may have the jury polled individually to determine if such is, in

fact, their verdict. If insufficient jurors agree with the verdict, the jury shall be sent out again to reconsider; otherwise, the verdict is complete and the jury shall be dismissed. If the verdict is read or recorded incorrectly by the clerk or foreman, the jury shall retire to correct the verdict.

Rule 21. Special Verdicts and Interrogatories.

The court may in its discretion require the jury to return their verdict in the form of specific findings on specified issues or may require the jury to return a general verdict accompanied by answers to questions related to the issues under consideration.

Rule 22. Instructions to the Jury; Arguments.

(a) Instructions. At the close of the evidence or at such earlier time as the Court may direct, any party may file written requested instructions for the court to give to the jury. The court shall inform the parties or their counsel of the instructions it intends to give and hear argument thereon out of the hearing of the jury.

(b) Arguments. Final arguments for the parties shall be made after the jury has been instructed. The court shall not comment on the evidence of the case and, if it should restate any of the evidence, it shall inform the jury that they are the sole judges of the facts.

Rule 23. Motions for Directed Verdict and For Judgment Notwithstanding the Verdict.

(a) Motion For A Directed Verdict. A party who moves for a directed verdict at the close of the evidence offered by the opposing side may offer evidence as if no motion had been made in the event that the motion is denied. A motion for directed verdict shall state the grounds therefor and may be granted by the court without the assent of the jury.

(b) Motion For Judgment Notwithstanding The Verdict. A party who has made a motion for a directed verdict at the close of all the evidence, which motion has been denied or not granted, may, within 10 days after entry of judgment move to have the verdict and any judgment entered thereon set aside and entered according to his motion for directed verdict; or if there has been verdict, the party may so move within 10 days after the jury has

been discharged. A motion for a new trial may be made in the alternative. The court shall enter judgment or make any orders consistent with its decision on the motions.

Rule 24. Finding By The Court.

In cases tried without a jury, and except in cases where a party defaults, fails to appear or otherwise waives such, findings of fact and conclusions of law shall be made by the court in support of all final judgments. Upon its own motion or the motion of any party within ten days of the entry of judgment, findings may be amended or added to and the judgment may be amended accordingly.

Rule 25. Judgments; Costs.

(a) Definition. A judgment includes any order finally and conclusively determining the rights of the parties.

(b) Judgment on Multiple Claims. When more than one claim for relief is presented in an action, however designated, a final judgment may be entered on less than all of such claims only upon the Court's specific finding that such is justified. Absent such a finding, an order or decision will not terminate the action as to any of the claims until all claims are finally decided, nor will the appeal period commence to run.

(c) Demand for Judgment.

(1) Generally. Except in the case of a default judgment, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if such relief is not demanded in the pleadings. It may be given for or against one or more of several claimants; and it may, if justice so requires, determine the ultimate rights of the parties on each side as between or among themselves.

(2) Judgment by Default. A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the demand for judgment.

(d) Costs. Unless the Court shall otherwise direct, the court shall allow necessary costs and disbursements to the prevailing party or parties as a matter of course. Such prevailing party shall file with the court a verified memorandum of his costs and necessary disbursements within five days of the entry of judgment and serve a copy

of such on the opposing party. If such are not objected to within 10 days, they shall be deemed to be part of and included in the judgment rendered. The appellate court may award costs in a like manner.

(e) Attorney's Fees. The court shall not award attorney's fees in a case unless such have been specifically provided for by a contract or agreement of the parties which is under dispute, or unless it reasonably appears that the case has been prosecuted for purposes of harrassment only or that there was no reasonable expectation of success on the part of the affirmatively claiming party.

Rule 26. Default.

(a) Entry of Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules his default may be proved by affidavit and judgment upon demand by default granted to the opposing party.

(b) Judgment by Default. Judgement by default may be entered by the court if a party's claim against the opposing party is for a sum of money which is or can by computation be made certain, and if the opposing party has been personally served on the reservation. Judgment by default for other relief can be entered only upon receipt of whatever evidence the court deems necessary to establish the claim. Notice of entry of a default judgment shall be served upon the party against whom it is taken.

(c) Setting aside Default. The court may, for good cause shown, set aside either an entry of default or a default judgment.

Rule 27. Summary Judgment.

Any time 30 days after commencement of an action, any party may move the court for summary judgment as to any or all of the issues presented in the case and such shall be granted by the court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Such motions, which shall be served not less than 10 days prior to the hearing on said motion, may be supported by affidavits, discovery, or memoranda, all of which must be made available to opposing parties at least two days prior to the hearing.

Rule 28. Entry of Judgment.

(a) Judgment. Judgment upon verdict of a jury shall be signed by the clerk and filed. All other judgments shall be signed by the judge and filed with the clerk.

(b) Effectiveness; Recordation. A judgment is complete and shall be deemed entered for all purposes when it is signed and filed as provided herein. The clerk shall immediately make a notation of the judgment in the judgment docket.

(c) Death of a Party. If a party dies after a verdict or decision upon any issue of fact and before judgment, judgment may nevertheless be entered thereon.

(d) Satisfaction of Judgment. A judgment may be satisfied in whole or in part, as to any or all of the judgment debtors by the owner thereof or his attorney of record executing under oath and filing an acknowledgment of satisfaction specifying the amount paid and whether such is full or partial satisfaction. A judge may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction. The clerk shall file all satisfactions of judgment and note the amount thereof in the judgment docket.

(e) Effect of Satisfaction; Limitation. A judgment satisfied in whole, with such fact being entered in the judgment docket, shall cease to operate as such. A partially satisfied judgment or unsatisfied judgment shall continue in effect for eight years or until satisfied. An action to renew the judgment remaining unsatisfied may be maintained anytime prior to the expiration of eight years and will extend the period of limitations an additional eight years and may be thereafter extended once more by the same procedure.

Rule 29. New Trials; Amendments.

(a) Grounds; Time. Any party may petition for a new trial on any or all of the issues presented by serving a motion not later than 10 days after the entry of judgment, for any of the following reasons:

- (1) Error or irregularity which prevented any party from receiving a fair trial;
- (2) Misconduct of the jury or jury members;
- (3) Accident or surprise, or newly discovered evidence which ordinary prudence could not have guarded

against or produced at trial;

(4) Damages so excessive or inadequate that they appear to have been given under the influence of passion or prejudice;

(5) Insufficiency of the evidence to justify the verdict or other decision, or that it is contrary to the law; or

(6) Error in law.

(b) Harmless Error. A new trial shall not be granted on the basis of error or irregularity which was harmless in that it did not result in a substantial injustice.

(c) Support for Motion. Parties may include memoranda or affidavits in support of their motions to which reply memoranda and affidavits shall be allowed if desired.

(d) Court Initiative. The court may, on its own initiative, not later than 10 days after entry of judgment, order a new trial on any grounds assertable by a party to the action, and shall specify the reasons for so ordering.

(e) Motion To Alter Or Amend Judgment. A motion to alter or amend a judgment shall be served not later than 10 days after entry of judgment.

Rule 30. Relief From Judgment Or Order.

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice as the court may direct; mistakes may be corrected before an appeal is docketed in the Appellate Court, and thereafter while the appeal is pending may be corrected with leave of the Appellate Court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may, in the furtherance of justice, relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons; (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 29(a); (3) fraud, misrepresentation or other misconduct of an adverse party; (4) when,

for any cause, the summons in an action has not been personally served upon the defendant and the defendant has failed to appear in said action; (5) the judgment is void; (6) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (7) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 31. Harmless Error.

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties, is grounds for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceedings shall disregard any error or defect which does not affect the substantial rights of the parties.

Rule 32. Stay Of Proceedings To Enforce A Judgment.

(a) Stay upon Entry of Judgment. Proceedings to enforce any judgment may be instituted no sooner than 30 days after service except as otherwise provided in this code.

(b) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such conditions as it considers proper for the security of the rights of the adverse party.

(c) Stay Upon Appeal. When an appeal is taken the appellant by giving a bond in an amount set by the court may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may be given within 10 days after the time of filing the notice of appeal. The stay is effective when the bond is approved and received by the court.

(d) Stay in Favor of the Tribe, Officer or Agency Thereof. When an appeal is taken by the Tribe, or an officer or agency of the Tribe, and the operation or enforcement of the judgment is stayed, on bond, obligation or other security shall be required from the appellant.

(e) Power of Appellate Court Not Limited. The provisions of this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(f) Stay of Judgment upon Multiple Claims. When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 25, the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(g) Waiver of Undertaking. In all cases the parties may, by written stipulation, waive the requirements of this rule with respect to the filing of a bond or undertaking. In all cases where an undertaking is required by these rules a deposit in court in the amount of such undertaking, or such lesser amounts as the court may order, is equivalent to the filing of the undertaking.

(h) Other Relief. No stay, injunction, waiver of undertaking or security for costs or any other relief from a judgment or order shall be granted by the court without actual notice and opportunity to be heard on the part of the prevailing party to the action.

Rule 33. Disability Or Disqualification Of A Judge.

(a) Disability. If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by

the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

(b) Disqualification. Whenever a party to any action or proceeding, civil or criminal, or his attorney shall make and file an affidavit that the judge before whom such action or proceeding is to be tried or heard has a bias or prejudice, either against such party or his attorney or in favor of any opposite party to the suit, such judge shall proceed no further therein, except to call in another judge to hear and determine the matter.

Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be filed as soon as practicable after the case has been assigned or such bias or prejudice is known. If the judge against whom the affidavit is directed questions the sufficiency of the affidavit, he shall enter an order directing that a copy thereof be forthwith certified to another judge (naming him), which judge shall then pass upon the legal sufficiency of the affidavit. If the judge against whom the affidavit is directed does not question the legal sufficiency of the affidavit, or if the judge to whom the affidavit is certified finds that it is legally sufficient, another judge must be called in to try the case or determine the matter in question. No party shall be entitled in any case to file more than one affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.

(c) "Sufficiency" for the purpose of this rule means whether the affidavit sets forth facts which, if true, would warrant disqualification of a judge. There shall be no hearing or other inquiry as to whether the facts as stated in the affidavit are indeed true, so as to preserve the dignity of the court and avoid the hint of impropriety.

Rule 34. Injunctions.

(a) Preliminary Injunction; Notice. No preliminary injunction shall be issued without notice to the adverse party.

(b) Temporary Restraining Order; Notice; Rehearing; Duration. No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; and shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 15 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, a motion for a preliminary injunction or show cause hearing must be set down for hearing at the earliest possible time, taking precedence over all other matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On 2 days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move for its dissolution or modification, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security. Except as otherwise provided by law, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Cheyenne River Sioux Tribe, or of an officer or agency, of either; nor shall it be required of a married person in a suit against the other party to the marriage contract.

A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of the court and

irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

(d) Form and Scope of Injunction or Restraining Order; Service. Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) Grounds for Injunction. An injunction may be granted:

(1) When it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act complained of, either for a limited period or perpetually;

(2) When it appears from the pleadings or by affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the party seeking injunctive relief;

(3) When it appears during the litigation that either party is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual;

(4) In all other cases where an injunction would be proper in equity.

Rule 35. Extraordinary Writ.

(a) Grounds for Relief. Where no other plain, speedy and adequate remedy exists, relief may be obtained by obtaining an extraordinary writ which may be granted for one of the following reasons:

(1) Where any person usurps, intrudes into, or unlawfully holds or exercises a public office or does or permits to be done any act which by law works a forfeiture of his office; or

(2) Where an inferior tribunal, board or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; or

(3) Where the relief sought is to compel any inferior tribunal, board or person to perform an act which the law specially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully excluded by such inferior tribunal, board or person; or

(4) Where the relief sought is to arrest the proceedings of any tribunal, board or person, whether exercising functions judicial or ministerial, when such proceedings are without or in excess of the jurisdiction of such tribunal, board or person.

(b) Habeas Corpus. Appropriate relief by habeas corpus proceedings shall be granted whenever it appears to the court that any person is unjustly imprisoned or otherwise restrained of his liberty. Upon the filing of the complaint the court shall, unless it appears from such complaint or the showing of the plaintiff that he is not entitled to any relief, issue a writ directed to the defendant commanding him to bring the person alleged to be restrained before the court at a time and place therein specified, at which time the court shall proceed in a summary manner to hear the matter and render judgment accordingly. If the writ is not issued, the court shall state its reasons therefore in writing and file the same with the complaint, and shall deliver a copy thereof to the plaintiff. If the defendant cannot be found, or if he does not have such person in custody, the writ (and any other process issued) may be served upon anyone having such person in custody, in the manner and with the same effect as if he had been made defendant in the action.

The defendant shall appear at the proper time and place with the person designated or show good cause for not doing so and must answer the complaint within the time allowed. The answer must state plainly and equivocally whether he then has, or at any time has had the person designated under his control and restraint, and if so, the cause thereof. If such person has been transferred,

the defendant must state that fact, and to whom, and when, the transfer was made, and the reason or authority therefore. The writ shall not be disobeyed for any defect of form or misdescription of the person restrained or detained, if enough is stated to show the meaning and intent thereof.

The person restrained may waive his right to be present at the hearing, in which case the writ shall be modified accordingly. Pending a determination of the matter the court may place such persons in the custody of such individual or individuals as may be deemed proper.

(c) Habeas Corpus; Decision. In each case, the court, upon determining the case, shall enter specific findings of fact and conclusions of law and judgment, in writing, and the same shall be made a part of the record in the case. If the court finds in favor of the complainant, it shall enter an appropriate order with respect to judgment or sentence in the former proceedings and such further orders with respect to rearraignment, retrial, custody, bail, or discharge as the court may deem just and proper in the case.

(d) Habeas Corpus Availability. Except in cases of extraordinary injustice, habeas corpus relief shall not be available to a person incarcerated as a result of a criminal conviction where the alleged grounds for relief have been or could have been raised by an appeal following the conviction.

Rule 36. Execution.

(a) Time. If within 30 days after entry of a judgment awarding money damages and/or costs against a party, or within 30 days after final resolution of an appeal to the appellate court from such a judgment it is made to appear to the court that the judgment debtor has been served notice of entry of judgment and not paid the judgment amount in full or commenced making installment payments in a manner agreed to by the parties, or is not current in such payments, the Court shall, upon motion of the judgment creditor, heard ex parte, order the Cheyenne River Sioux Tribal Police to execute on the personal property of the judgment debtor as provided herein.

(b) Procedure. The court shall order the judgment debtor to appear before it and answer under oath regarding all his personal property. The court shall then determine what property of the judgment debtor is available for execution and order the Cheyenne River Sioux Tribal Police

to seize as much of such property as reasonably appears necessary to pay the judgment amount. Failure of the judgment debtor to appear may be deemed a contempt of court. Sale of the seized property shall be at a public auction conducted by the Cheyenne River Sioux Tribal Police after giving at least 10 days public notice posted in at least three conspicuous public places on the reservation. Property shall be sold to the highest bidder who shall make payment for property in cash at the time of the sale. The person conducting the auction may postpone such in his discretion if there is inadequate response to the auction or the bidding, and may reschedule such upon giving the required notice. The person conducting the sale shall give a certificate of sale to the purchaser and shall make a return to the Court reciting the details of the sale.

(c) Exemption From Execution. The Court shall only order seizure and sale of such property of the judgment debtor to satisfy a money judgment the loss of which will not impose an immediate substantial hardship on the immediate family of the judgment debtor. Only property of the judgment debtor himself may be subject to execution and not property of his family, except property conveyed to the debtor's family in contemplation of the judgment being entered against him or gifts.

(d) Redemption From Sale. At any time within 6 months after sale under this Rule, the judgment debtor may redeem his property from the purchaser thereof by paying the amount such purchaser paid for the property plus 8 percent interest, plus any expenses actually incurred by the purchaser, such as taxes and insurance, to maintain the property.

Rule 37. Appeal.

(a) Appellate Court. All appeals from the Cheyenne River Sioux Tribal or Juvenile Court shall be heard by the Cheyenne River Sioux Tribal Appellate Court.

(b) Right to Appeal. Any party who is aggrieved by any final order, commitment or judgment of the trial court may appeal in the manner prescribed by this Rule.

(c) Time; Notice of Appeal. Within 30 days from the entry of the order of judgment appealed from the party taking the appeal must file with the trial court a written notice of appeal specifying the parties to the appeal, the order or judgment appealed from and a short statement

of the reasons or grounds for the appeal. The clerk shall file the notice and mail copies, to be provided by the appealing party, to all other parties to the appeal at their last known addresses.

(d) Parties. The party taking the appeal shall be referred to as the appellant; all other parties shall be referred to as respondents. The name of the case shall be the same as that used in the trial court.

(e) Bond on Appeal. At the time of filing the Notice of Appeal the appellant shall file a bond in an amount set by the trial court upon notice to opposing parties.

(f) Stay Pending Appeal. In any case which an appeal is perfected as required by this Rule, the appellant may petition the tribal court upon notice to all respondents for an order staying the order, commitment or judgment rendered conditioned upon execution of a bond to guarantee performance of judgment, order or commitment. A stay shall only be granted in those cases in which manifest injustice would result if no stay were issued.

(g) Clerk. One of the clerks of the tribal court shall also serve as the Clerk of the Appellate Court. Within 15 days after a Notice of Appeal is filed, the Clerk shall prepare, certify and file with the Appellate Court all papers comprising the record of the case appealed. A separate docket shall be maintained for the appellate court in which shall be recorded each stage of the proceedings on each case appealed.

(h) Subpoenas. The presiding judge of the appellate court shall, when hearing a case, have authority by subpoena to compel a witness to attend and testify or compel the production of documents where such is deemed necessary to the rendition of the court's opinion. There shall not, however, be a new trial in the appellate court and, except in cases where the findings of fact of the tribal court are clearly erroneous, there will be no review of the factual findings of the Tribal Court.

(i) Briefs and Memoranda. Within 30 days of the filing of the Notice of Appeal or within such longer time as the Appellate Court shall allow, the appellant shall file a written brief, memorandum or statement in support of his appeal. An original and three copies shall be filed with the Clerk and one additional copy shall be served upon or mailed to each other party or his counselor or attorney. The respondent shall have 30 days after

receipt of the appellant's brief, memorandum or statement within which to file a reply brief, memorandum or statement and shall file and serve such in the same manner as the appellant's brief, memorandum or statement. No response shall be allowed either party without leave of the appellate.

(j) Argument. The Appellate Court shall decide all cases upon the briefs, memoranda and statements filed plus the record of the tribal court without oral argument unless either party requests oral argument and shows to the court that such will aid the court's decision, or unless the court decides on its own motion to hear oral argument.

(k) Decision. The Appellate Court shall issue a written decision and all judgments on appeal shall be final.

Rule 38. Citation.

These Rules shall be known as the Cheyenne River Rules of Civil Procedure and may be abbreviated "C.R.R.-C.P."

TITLE VIII

CHEYENNE RIVER SIOUX TRIBE DOMESTIC RELATIONS CODE

I. MARRIAGE

Sec. 8-1-1 Marriage License.

(1) No marriage shall be performed under authority of this Code unless the parties have first obtained a marriage license from the Clerk of the Cheyenne River Sioux Tribal Court.

(2) Upon payment of a \$3.00 fee, the Clerk shall issue a marriage license to persons who appear entitled to be married as provided in this Domestic Relations Code.

(3) The Clerk shall keep a record of all marriage licenses and certificates issued.

(4) The marriage license, properly endorsed by the person performing the marriage, shall be returned to the Clerk who shall issue a marriage certificate to the parties.

Sec. 8-1-2 Existing Marriages.

(1) All marriages performed other than as provided for in this Domestic Relations Code, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Cheyenne River Sioux Tribe.

(2) All marriages performed on the Cheyenne River Sioux Indian Reservation prior to the effective date of this Code, including those perfected according to any Tribal custom, are declared valid for all purposes under this Code. Parties to such marriages may obtain a marriage certificate upon proof to the Clerk by affidavit or otherwise of the validity of their marriage, and payment of a \$3.00 fee.

Sec. 8-1-3 Persons Who May Marry.

No marriage license shall be issued or marriage performed unless the persons to be married meet the following qualifications:

(1) They are at least 14 years old and, if over 14 years of age but less than 18 years of age, have the written con-

sent of their parents or guardians, properly notarized, to marry;

(2) At least one of the persons to be married is an enrolled member of the Cheyenne River Sioux Tribe;

(3) Both parties to the marriage have obtained a blood test to detect venereal disease within 30 days prior to the marriage and such test results were negative. A certificate of the tests results shall be presented to the clerk before any license is issued.

Sec. 8-1-4 Who May Perform Marriages.

(1) A marriage may be solemnized on the Reservation by any of the following:

- (a) recognized clergymen or persons recognized by their religions as having authority to marry;
- (b) a judge of the Cheyenne River Sioux Tribe;
- (c) the Chairman of the Cheyenne River Sioux Tribe;
- (d) any person recognized by South Dakota Law as having authority to marry.

(2) No marriage solemnized before any person professing to have authority to marry shall be invalid for want of such authority, if consummated in the belief of the parties or either of them that such person had such authority and that they have been lawfully married.

Sec. 8-1-5 Marriage Ceremony.

No particular form of marriage ceremony is required, provided, however, that the persons to be married must declare in the presence of the person performing the ceremony, that they take each other as husband and wife, and he thereafter declares them to be husband and wife.

Sec. 8-1-6 Void and Voidable Marriages.

(1) Marriages between ancestors and their descendants, between brothers and sisters, of half as well as the whole blood, between an uncle and his niece or an aunt and her nephew, or between first cousins are void from the beginning, whether or not the degree of relationship is legitimate or illegitimate.

(2) Marriages between a person who is at the time of the marriage, married to another person still living are void; provided, however, that such marriages will be considered valid until ruled otherwise by a Court of Competent jurisdiction if the party previously married:

(a) actually believed in good faith that the prior marriage had been dissolved as a result of divorce or annulment; or

(b) actually believed, in good faith, that his or her prior spouse was dead.

(3) When a marriage is contracted in good faith and in the belief that it is a valid marriage, the issue of such marriage born or conceived prior to the voiding or receiving notice of the invalidity of the marriage for any reason shall be the legitimate issue of both parents.

(4) If either party to a marriage is incapable as a result of some physical cause to enter into the marital state and such cause appears to be permanent, or if the consent of either party to marry was obtained by force or coercion, the marriage is voidable.

II. ANNULMENT

Sec. 8-2-1 Grounds for Annulment.

A marriage may be annulled for any of the following causes existing at the time of marriage:

(1) That the party in whose behalf it is sought to have the marriage annulled, was under the age of 18 years, and such marriage was contracted without the consent of his or her parents or guardian, or persons having charge of him or her, unless, after attaining the age of consent, such party freely cohabits with the other as husband and wife;

(2) That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;

(3) That either party was of unsound mind, unless such party, after coming into reason, freely cohabited with the other as husband or wife;

(4) That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud; freely cohabited with the other as husband or wife;

(5) That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife; or

(6) Impotence which continues and appears to be incurable.

Sec. 8-2-2 Action to Annul - Parties and Limitations.

An action to obtain a decree of annulment of a marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

(1) For causes mentioned in Subsection 1, by the party to marriage who was married under the age of legal consent, within two years after arriving at the age of consent, or by a parent, guardian or other person having charge of such minor, at any time before such married minor has attained the age of legal consent;

(2) For causes mentioned in Subsection 2 by either party during the life of the other or by the former husband or wife;

(3) For causes mentioned in Subsection 3 by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;

(4) For causes mentioned in Subsection 4 by the party injured, within two years after the discovery of the facts constituting a fraud;

(5) For causes mentioned in Subsection 5 by the injured party within four years after the marriage;

(6) For causes mentioned in Subsection 6 by the injured party within two years after the marriage.

Sec. 8-2-3 Legitimacy of Children.

When a marriage is annulled for any reason, other than for fraud in that the wife is pregnant with a child from a man other than the husband, children begotten before judgment

are legitimate and succeed to the estate of both parents. The Court may at the time of granting the annulment or at any future time, make necessary orders for the custody and support of said child or children as the circumstances of the parents may require.

Sec. 8-2-4 Conclusiveness of Judgment of Annulment.

A judgment of annulment of a marriage is conclusive only as against the parties to the action and those claiming under them.

III. DIVORCE

Sec. 8-3-1 Divorce and Annulment Procedure.

Proceedings in divorce and annulment shall be commenced and conducted in the manner provided by law for civil cases, except as otherwise specifically provided. A final decree of divorce shall restore the parties to the status of unmarried persons.

Sec. 8-3-2 Residence Requirements for Divorce, Annulment, or Separate Maintenance.

The plaintiff in an action for divorce, annulment or separate maintenance must, at the time the action is commenced, be a resident of the Cheyenne River Sioux Indian Reservation, and in order that each party be entitled to the entry of a decree or judgment of divorce, annulment or separate maintenance, that residence must be maintained until the decree is entered.

Sec. 8-3-3 Waiting Period Before Trial of Divorce, Annulment or Separate Maintenance.

An action for divorce, annulment or separate maintenance shall not be heard, tried, or determined by the tribal court until at least sixty days have elapsed from the completed service of the plaintiff's summons and complaint therein. During said waiting period the court may issue all orders required in respect to temporary alimony, support and child custody or to protect any of the parties to the action during the pendency thereof.

Sec. 8-3-4 Grounds For Divorce.

A divorce may be granted for any of the following causes:

- (1) Irretrievable breakdown of the marriage;
- (2) Impotency of the defendant from the time of the marriage where such impotency continues to the time of the commencement of the action;
- (3) Adultery committed by the defendant subsequent to marriage;
- (4) Willful desertion of the plaintiff by the defendant for more than one year;
- (5) Willful neglect of the defendant to provide for the plaintiff the common necessities of life for a period of six months;
- (6) Habitual drunkenness or drug incapacitation of the defendant for a period of at least one year;
- (7) Conviction of the defendant of a Class A offense under the Cheyenne River Sioux Tribal Law and Order Code, or of a felony in any other court;
- (8) Cruel treatment of the plaintiff by the defendant to the extent of causing bodily injury or great mental distress to the plaintiff;
- (9) When the parties have lived apart without cohabitation for a period of three consecutive years either voluntarily or under a decree of separate maintenance;
- (10) Permanent insanity of the defendant; provided, however, that no divorce shall be granted on this ground unless the defendant has been duly and regularly adjudged insane by a court of competent jurisdiction and such insanity reasonably appears to be permanent; further, no divorce shall be granted unless a guardian ad litem has been appointed to represent the defendant in the divorce proceedings.

Sec. 8-3-5 Limitations.

A divorce must be denied:

- (1) when the cause is adultery and the action is not commenced within one year after its discovery by the injured party ;

(2) when the cause is conviction of an offense and the action is not commenced before the expiration of one year after a pardon or the termination of the period of sentence; or

(3) in all cases when there is unreasonable lapse of time before the commencement of the action, or two years have passed since the grounds became or should have become known to the complaining party.

Sec. 8-3-6 Right of Husband to Divorce.

The husband may in all cases obtain a divorce from his wife for the same causes and in the same manner as the wife may obtain a divorce from her husband.

Sec. 8-3-7 Temporary Alimony and Suit Money; Restraint.

The court may after notice and hearing:

(1) Order either party to pay to the clerk for the benefit of the other party a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute and defend the action;

(2) Restrain either party from doing certain acts harmful to the other or to the children, or to the property of either, during the pendency of the divorce proceedings.

Sec. 8-3-8 Pleadings; Findings; Decree.

The complaint shall be in writing and signed by the plaintiff. No decree of divorce shall be granted upon default or otherwise, except upon legal evidence taken in the cause by the Court who shall make and file its findings and decree upon the evidence.

Sec. 8-3-9 Disposition of Property and Children.

When a decree of divorce is made the court shall make such orders in relation to the children, property and parties, and the maintenance of the parties and children by alimony and child support, as may be equitable. Subsequent changes or new orders may be made by the court with respect to the custody of the children or the distribution of property as shall be reasonable and proper upon notice of hearing.

Sec. 8-3-10 Custody of Children in Case of Separation.

In any case of separation of husband and wife having minor children, or whenever a marriage is declared void or dissolved, the court shall make such order for the future care and custody of the minor children as it may deem just and proper. In determining custody, the court shall consider the best interest of the child and the past conduct and demonstrated predictions of each of the parties and the natural presumption that the mother is best suited to care for young children. The court may inquire of the children and take into consideration the children's desires regarding the future custody; however, such expressed desires shall not be controlling and the court may nevertheless determine the children's custody otherwise.

IV. SEPARATE MAINTENANCE AND PROPERTY RIGHTS

Sec. 8-4-1 Separate Maintenance.

(1) A person living on the Reservation, who through no fault of their own or by agreement with their spouse is living separate and apart from such spouse where such spouse has failed to support them when otherwise able to do so, may maintain an action for a decree of separate maintenance.

(2) During the pendency of the action the Court may order the spouse to pay temporary alimony and suit money as in an action for divorce upon notice and hearing.

(3) If it appears that the person is entitled to such, the Court shall grant a decree of separate maintenance awarding custody of children, alimony, child support and expenses of suit as may be equitable under the circumstances.

Sec. 8-4-2 Property Rights of Married Persons.

(1) Either a wife or a husband can obtain, own, hold, give, sell or otherwise deal with real property as if they were unmarried.

(2) Both wives and husbands can enter into contracts and sue or be sued to the same extent and in the same manner as if unmarried.

(3) Neither a wife nor a husband nor the property of either in which their spouse has no interest is liable for the debts or obligations of the other spouse solely by reason of marriage to the other spouse.

(4) A conveyance, transfer, or lien executed by either husband or wife in favor of the other shall be valid to the same extent as between other persons.

Sec. 8-4-3 Family Expenses.

The expenses of the family and the education of the children are chargeable upon the property of both husband and wife or either of them, and they may be enforced jointly or separately.

V. ADOPTION

Sec. 8-5-1 Jurisdiction Over Adoption.

The Cheyenne River Sioux Tribal Juvenile Court shall have full original jurisdiction in adoption matters where the person to be adopted is the child of at least one Indian parent and the child lives within the Cheyenne River Sioux Indian Reservation or has been placed outside the Reservation by order of the Tribal Juvenile Court.

Sec. 8-5-2 Who May Adopt.

(1) Any minor child subject to the jurisdiction of the Cheyenne River Sioux Tribe may be adopted by any adult person, Indian or non-Indian, as hereinafter provided.

(2) A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife, nor can a married woman, not lawfully separated from her husband, adopt a child without the consent of her husband, if the spouse not consenting is legally capable of giving such consent.

(4) A person adopting a child must be at least 10 years older than the child adopted.

(5) In any adoption involving an Indian child, preference shall be given to Indian adoptive parents, and as between Indian adoptive parents, preference shall be given to residents of the Cheyenne River Sioux Indian Reservation.

Sec. 8-5-3 Consent to Adoption.

(1) No consent to adoption shall be required from a parent or parents whose parental rights have been terminated by a court of competent jurisdiction.

(2) A child cannot be adopted without the consent of both parents, if living, provided, however, that the Court can allow the adoption of a legitimate child without the consent of a parent whose whereabouts are unknown after a reasonable search and who has deserted the family for a period of two years without in that time ever contacting the family.

(3) A child deserted by its parents or surviving parent and having no legal guardian may be adopted without the consent of its parents upon a finding by the Court that the child has in fact been deserted and that the identity of the parents is unknown after reasonable investigation.

(4) The consent of a child over the age of twelve years is necessary to its adoption.

(5) A child who has a guardian of its person other than a parent cannot be adopted without the consent of such guardian provided, however, that an adoption of such a child may be accomplished without such consent if the Court finds that the adoption will be in the child's best interest.

(6) Consent of a parent shall be taken by the Court and shall be accomplished by signing a consent form to be provided by the Court which explains the consequences of consenting to the adoption. For parents residing outside the Reservation, the consent form shall be executed before a Notary Public who must certify that the consent of the parent appears to be freely given in order for such consent to be valid.

(7) A consent to adoption may be withdrawn only prior to the entry of an Order of Adoption, and only upon permission of the Court for the reason that the best interests of the child will be served by such withdrawal.

Sec. 8-5-4 Petition to Adopt.

A person or persons wishing to adopt a child through the Cheyenne River Sioux Tribal Juvenile Court must file a petition, verified under oath, which must contain the following information:

(1) The full names, address, and ages of the adopting parents, plus the names and ages of all other children living in their household, if any;

(2) The full name, residence, sex and birthdate of the child whose adoption is sought, plus documentary proof of the child's date and place of birth, if available;

(3) Proof of parental or guardian's consent to the adoption or of the termination of the natural parents' parental rights or of the deserted status of child, as is appropriate;

(4) A full description and statement of value of all property owned or possessed by the child;

(5) A statement by the adopting parents that it is their desire to adopt the child and to establish the relation of parent and child with the adopted child, and that they will protect and care for the child to the best of their ability if the adoption is granted.

Sec. 8-5-5 Investigation Report.

After the filing of the petition for adoption, the Court may request the assistance of Tribal, Federal, or State officials or agencies to inquire into and report in writing to the Court on the suitability of the child for adoption, and the financial, moral, and physical fitness and general background of the adoptive parents and their home, together with a recommendation regarding the proposed adoption.

Sec. 8-5-6 Adoption Hearing.

Within five days after the written investigation report is received or within a reasonable time, the Court shall fix a time for hearing on the petition for adoption. The adoptive parent or parents and the adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption shall be duly notified if possible and may appear or be represented by a spokesperson authorized to represent them for the purpose of adoption. The Judge shall examine all persons appearing separately, and if satisfied as to the stability of the child for adoption, the financial ability and moral

and physical fitness and responsibility of the adoptive parents, and that the best interests of the child will be promoted by the adoption, may enter a final decree of adoption, or may place the child in the legal custody of the petitioners for a period of not more than six months prior to entering a final decree of adoption, or if the Court is satisfied that the adoption petition will not be in the best interests of the child, the petition shall be denied and the child's guardian instructed to arrange suitable care for the child, and the Court may request the Tribal agencies, federal agencies, and other agencies authorized to provide such services to assist in the placement and the care of the child.

Sec. 8-5-7 Report and Final Decree of Adoption.

If the Court does not enter a final Decree of Adoption at the time of the hearing for adoption, but places the child in the legal custody of the petitioners, within six months after the child has been in the custody of the petitioner, the Court shall request a supplementary written report as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final Decree of Adoption may be entered. No final order shall be entered by the Court unless it appears to the Court that the adoption is in the best interests of the child. In any case where the Court finds that the best interests of the child will not be served by the adoption, a guardian shall be appointed and suitable arrangements for the care of the child shall be made and the Court may request Tribal agencies or federal agencies or other agencies authorized to provide such services to assist in the placement and the care of the child.

Sec. 8-5-8 Adoption Records.

All records, reports, proceedings, and orders in adoption cases are confidential and permanent records of the Court and shall not be available for release to or inspection by the public. Information contained in such records may be released upon petition to the Court by the adopted person after reaching legal majority, or otherwise upon order of the Court upon good and sufficient cause shown.

Sec. 8-5-9 Contents of Adoption Order.

The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings. Within five days after the final decree of adoption has been entered by the Court, the Division of Vital Statistics of the South Dakota Board of Health shall be notified by the Clerk of the Court that the adoption has taken place, giving the full name, sex, birthdate, names of natural parent(s) and full names of adoptive parent(s) so that a new record of birth in the new name and with the name or names of the adopting parents is recorded, and provided with a certified true and correct copy of the final decree of adoption.

Sec. 8-5-10 Name and Legal Status of Adopted Child.

Minor children adopted by order of Court shall assume the surname of the person whom they are adopted, unless the Court orders otherwise, and shall be entitled to the same rights of persons and property as children or heirs of the persons adopting them. Adoption shall not affect Tribal membership status or any rights incident thereto.

Sec. 8-5-11 Rights and Liabilities of Natural Parents.

The natural parents of an adopted child are, from the time of the final decree of adoption, relieved of all parental duties toward, and all responsibility for children so adopted, and shall have no further rights over them.

VI. GUARDIANSHIP

Sec. 8-6-1 Jurisdiction.

(1) The Cheyenne River Sioux Tribal Court shall have authority, whenever it appears necessary or convenient, to appoint guardians for the persons and/or estates, or for the purpose of actual or contemplated litigation (guardian ad litem) of either minors or persons incompetent by reason of physical or mental sickness or deficiency, advanced age, or chronic use of drugs or alcohol.

(2) The Cheyenne River Sioux Tribal Court shall have authority to appoint guardians when the person for whom the guardianship is sought is a member of the Tribe or the child of a member of the Tribe, whether or not he lives on the Reservation.

(3) The Tribal Court may, in its discretion, refer matters concerning the guardianship of a minor to the Tribal Juvenile Court.

Sec. 8-6-2 Appointment of Guardian in Connection With Probating an Estate.

(1) The Court may, in the process of administering an estate for which there is a valid will containing a designation of a guardian for minor children if orphaned by the deceased's death, appoint the person therein designated as guardian of the minors involved without the necessity of a separate guardianship hearing.

(2) If the person so designated is unable or unwilling to serve, or if such person's appointment is objected to by any child over 14 years of age, or if the Court deems such to be in the minor's best interest, a separate guardianship hearing shall be held as provided herein.

Sec. 8-6-3 Petition.

(1) Except as provided in the preceding section, guardianship proceedings shall be initiated by the filing of a petition by a relative or other person on behalf of the minor or incompetent, or by a minor himself if over 14 years of age. The Court may initiate proceedings to appoint a guardian if such appointment reasonably appears necessary and no other person has initiated such proceedings.

(2) The petition shall set forth the name of the petitioner; the petitioner's relationship to the minor or incompetent; shall list all known relatives of the minor or incompetent and their addresses, relationships and ages insofar as is known to petitioners; shall list all property of the minor or incompetent, real and personal, known to petitioner; shall list in detail the present conditions and circumstances which warrant the appointment of a guardian; shall pray that Letters of Guardianship be issued to himself or some other suitable person to act as guardian of the minor or incompetent.

Sec. 8-6-4 Notice; Hearing.

(1) The petitioner, or the Clerk of the Court, if a minor or the Court itself initiates the proceeding, shall cause notice of the hearing to be given by mail or personal service to all known interested persons listed on the petition not less than five days before scheduled hearing. Such notice need not be given in the case of a minor whose parents appear and consent to waive such notice prior to the hearing or in the case of an adult where the spouse and children living on the Reservation appear and waive such notice. An appearance and waiver may be made personally or by affidavit to the Court.

(2) Hearing for Minor. At a hearing conducted to appoint a guardian for a minor, the Court shall: examine the petition; determine the need to have a guardian appointed; examine the minor (if over 14 years of age) to determine who he would prefer to have as his guardian; determine which person, either the petitioner or some other person, is most suitable to act as guardian, and that person's willingness to act as such; and make an order appointing a guardian, setting forth the scope of the guardian's authority, whether or not security for his performance is to be required, and the duration of such appointment.

(3) Hearing for Incompetent. At a hearing conducted to appoint a guardian for an incompetent, the Court shall: examine the petition; determine the need to have a guardian appointed by taking such testimony as any interested party wishes to present, but including not less than two doctors' reports, written or oral, under oath, to the effect that the incompetent is not presently able to handle his property or affairs, the anticipated duration of the incapacity, and that the best interests of the incompetent will be served by having a guardian appointed; determine which person, either the petitioner or some other person, is most suitable to act as guardian, and that person's willingness to act as such; and make an order appointing a guardian, setting forth the authority of the guardian, whether or not security for his performance is to be required, and the duration of such appointment.

Sec. 8-6-5 Who May Serve As Guardian.

Any adult person 21 years of age or older and subject to the jurisdiction of the Cheyenne River Sioux Tribal Court may serve as a guardian. Preference shall be given to relatives of the minor or incompetent in order of their closeness of relationship and some preference shall also be given to a person with whom the minor or incompetent is living at the time of the guardianship hearing. Preference shall be given to the person preferred to act as his guardian by a minor or incompetent over 14 years of age, but in all cases, the Court shall determine the best interests of the minor or incompetent in selecting a guardian.

Sec. 8-6-6 Security for Faithful Performance of Duties.

The Court may, but need not, require a guardian to provide security in the form of a bond or otherwise to assure the faithful performance of the guardian's duties. Any surety of any such security will be deemed to have consented to the jurisdiction of the Cheyenne River Sioux Tribal Court for the purposes of action against such security.

Sec. 8-6-7 Oath; Letters of Guardianship.

(1) The guardian appointed by the Court shall be required to take an oath, the form of which to be prescribed by the Court, to the effect that he will faithfully perform his duties as guardian.

(2) Upon taking the oath and filing with the Court such security, if any, as may have been required, the guardian shall be issued Letters of Guardianship, issued by the Clerk under the seal of the Court, as evidence of his appointment. Any limitations in the authority of the guardian shall be set forth on the Letters so issued.

Sec. 8-6-8 Inventory and Appraisement.

(1) Within 45 days after the appointment of a general guardian or guardian of the property or estate of a minor or incompetent, the guardian shall prepare and submit to the Court an inventory and appraisement of the estate.

(2) The appraisalment shall be made by three disinterested persons who shall certify under oath to their appraisalment and may receive reasonable compensation for their services.

(3) No appraisalment shall be required of items of obvious, readily ascertainable value; e.g. bank account assets, or where the value of the estate is reasonably believed by the guardian to be less than \$1,000.00. If no appraisalment is required, the guardian shall certify under oath to the obvious or estimated value of the assets not appraised.

Sec. 8-6-9 Annual Accounting.

(1) The guardian of every estate in value over \$1,000.00 shall submit an annual account of the estate to the Court for approval, on such notice as the Court may direct, in each year in which the value of the estate is or is reasonably believed to be in excess of \$1,000.00.

(2) Such account shall be verified on the oath of the guardian and shall contain an accounting of all additions to and withdrawals from the estate, and shall be accompanied by supporting cancelled checks, vouchers, receipts, statements, etc.

Sec. 8-6-10 Guardian's Compensation.

(1) No guardian shall receive any compensation for acting as such without the prior approval of the Court.

(2) The guardian of an estate in excess of \$1,000.00 in value may receive annual compensation for acting as such in amount not less than \$25.00 nor greater than 10% of the gross income of the estate.

(3) The guardian of an estate less than \$1,000.00 in value shall receive no compensation unless specifically ordered by the Court for extraordinary service to the estate.

(4) The right to receive compensation as guardian of an estate shall be deemed waived for any year in which such is not requested and received.

Sec. 8-6-11 Powers and Responsibilities of Guardian.

(1) Except as otherwise specifically ordered or limited by the Court:

(a) A general guardian or guardian of the person of a minor or incompetent shall have the right to take or provide for the custody of the person of the minor or incompetent and shall be required to care for the health, safety and welfare of such minor or incompetent and provide for their education and medical care as needed or appropriate.

(b) A general guardian or guardian of the estate or property of a minor or incompetent shall have authority to invest, manage and dispose of the property of the minor or incompetent in a prudent and reasonable manner and expend such portions of the estate, income and then principle, as he shall deem reasonably necessary for the support, care, including medical care, and education of the minor or incompetent given the size and nature of the estate and the station in life and needs of the minor or incompetent.

(c) A guardian ad litem shall have power and authority to represent a minor or incompetent's best interests in actual, threatened or contemplated litigation or other proceedings of a legal nature (other than of a criminal nature and/or under the Juvenile Code), and to employ counsel, and settle or compromise suits or claims, subject to the approval of the Court.

(2) A guardian of any kind may petition the Court for authority to do any act about which he is uncertain of his authority, and the Court may grant such authority, after such notice and hearing, if any, as the Court may direct, if such appears to be consistent with the best interests of the minor or incompetent.

(3) A guardian of any kind shall stand in a fiduciary relationship to the minor or incompetent ward; shall exercise a high degree of care in managing the estate of his ward; shall derive no personal benefit of any kind from his management of the estate of his ward; and shall be civilly liable to said ward for any losses to the estate attributable to a breach of these duties. Action to enforce such liability may be brought by the ward or a subsequently appointed guardian on behalf of the ward within two years

after the appointment of a new guardian or the removal of the incompetency or the arriving at the age of majority.

Sec. 8-6-12 Discharge of Guardian.

(1) Every guardian appointed as provided herein shall serve until discharge by the Court.

(2) A guardian of a minor, not otherwise incompetent, or the minor himself, may petition the Court on or after the date the minor reaches the age of majority to have the guardian discharged and the estate turned over to the minor. The Court shall grant such discharge with or without notice and hearing, upon the receipt of sufficient, competent evidence that the minor has reached the age of majority unless the minor appears to be otherwise incompetent, in which case a hearing with notice, shall be held to determine such fact.

(3) A person, other than a minor, who has had a guardian appointed for reasons of incompetency, or the guardian or a relative of such incompetent may petition the Court for a determination of his restoration to capacity and for the discharge of the guardian. The Court shall hold a hearing, after such notice to known interested persons as the Court shall direct, and receive evidence, both of a medical nature and otherwise, of the ward's competency. If it be found that the ward is of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged and his guardianship and guardian discharged.

Sec. 8-6-13 Guardianship Records.

The Clerk shall keep a separate, permanent file for each guardianship proceeding and shall file all papers relevant thereto, including petitions, notices, orders for hearings, etc. Any guardian duly appointed shall be entitled to receive, without charge, three certified copies of the Letters of Guardianship. Certified copies of filed papers shall be otherwise available at a fee per copy to be established by the Clerk of Courts.

Sec. 8-6-14 Guardianship of Trust Property.

The Court is hereby authorized to appoint a Guardian

of the trust estate of minors or incompetents using the procedures and safeguards outlined herein for the purpose of conveying or consenting to the conveyance of an interest in trust property owned by such minor or incompetent if it appears that the price to be paid is reasonable and adequate and that such sale is in the best interests of said minor or incompetent. All actions taken by such guardian consenting to or conveying trust property shall be subject to the approval of the Superintendent.

Sec. 8-6-15 Temporary Guardianship and Custody.

The Court shall have the power to entertain and grant or deny petitions for temporary guardianship and custody when it determines it to be in the best interest of the child, incompetent or non-competent person involved; provided, that full notice and opportunity to be heard be given to all interested parties within ten (10) days thereafter, and further provided that no guardian so appointed sell, dispose of, convey or otherwise alienate title to or interest in the ward's property during such temporary guardianship period.

TITLE IX
CHEYENNE RIVER SIOUX TRIBAL
PROBATE CODE

I. GENERAL PROVISIONS

Sec. 9-1-1 Jurisdiction.

The Cheyenne River Sioux Tribal Court shall have jurisdiction to appoint administrators, determine heirs, appoint executors, determine the validity of wills, and to probate and distribute the estates and wills of any member of the Cheyenne River Sioux Tribe with respect to non-trust personal property and non-restricted or non-trust real property located on the Reservation. The Tribal Court shall exercise such functions over restricted or trust property to the greatest extent allowed by law.

Sec. 9-1-2 Construction.

These provisions relating to decedents' estates shall be literally construed and applied to give effect to the underlying policy of distributing a decedents' property according to the decedent's intent where there is a valid will manifesting such intent, or according to the provisions of this Probate Code where there is not a valid will.

Sec. 9-1-3 Reference to Other Law.

The law of the State of South Dakota relative to decedents' estates may be referred to and followed in situations where this Probate Code provides no guidance regarding the handling of decedent's estates, but only so far as such law is not inconsistent with the provisions and spirit of this Probate Code.

Sec. 9-1-4 Effect of Fraud and Evasion.

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Probate Code or if fraud is used to avoid or circumvent the provisions or purposes of this Probate Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud including restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within 2 years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the

fraud later than 5 years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affect the succession of his estate.

Sec. 9-1-5 Evidence as to Death or Status.

In proceedings under this Code the rules of evidence in the trial court are applicable unless specifically displaced by the Probate Code. In addition, the following rules relating to determination of death and status are applicable:

(1) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent;

(2) A certified or authenticated copy of any record of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive, is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;

(3) A person who is absent for a continuous period of 5 years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

Sec. 9-1-6 Practice in Court.

Unless specifically provided to the contrary in this Probate Code or unless inconsistent with its provisions, the Cheyenne River Rules of Civil Procedure including the rules governing vacation of orders and appellate review control formal proceedings under this Probate Code.

Sec. 9-1-7 Records and Certified Copies.

The Clerk shall keep a file for each decedent of all documents filed with the Court under this Probate Code and shall keep a numerical index of all such estates to facilitate access to such records. Upon payment of the fee (not to exceed fifty cents per copy page), the Clerk shall issue certified copies of any document or paper so filed.

0 not voting, and 3 absent.

RESOLUTION NO. 47-78-CR

WHEREAS, the Cheyenne River Sioux Tribe of Indians, having accepted (48 Stat. 984), and

47-78
Preston
Ruddell
4/7/78 adopted

is an unincorporated Act of June 18, 1934

WHEREAS, the Tribe, in order to establish its tribal organization; to conserve its tribal property; to develop its common resources, and to promote the general welfare of its people, has ordained and established a Constitution and By-Laws, and

WHEREAS, the Tribal Council finds that the present tribal laws are not properly codified and that many are antiquated, and

WHEREAS, the Tribal Council finds that the due process requirements of the Indian Civil Rights Act of 1968, 25 USC § 1302 et. seq., protecting the rights of the people should be implemented into Indian law, and

WHEREAS, the Tribal Council finds that the substantive laws embodied in the new Tribal Code are modern and more accurately reflect the expectations of the people than the old Code, now

THEREFORE, BE IT RESOLVED, that Title I, II, VII and XIV of the new Tribal Code which are attached hereto and hereby incorporated in this Resolution by reference, are hereby enacted into law.

BE IT FURTHER RESOLVED, that said Titles shall act as an express repeal of Title 4, in its entirety and Title 9, Chapter 3, Subchapter 1. in its entirety of the old Tribal Code; and that the same shall no longer be the law of the Reservation, as of the effective date on which Titles I, II, VII, and XIV of the new Code become effective.

BE IT FURTHER RESOLVED, that said Titles of the new Tribal Code shall become effective as of the date of this Resolution.

BE IT FURTHER RESOLVED, that Title III, IV, V, VI, VIII, IX, X, XI, XII and XIII of the new Tribal Code which are attached hereto and hereby incorporated in this Resolution by reference, are hereby enacted into law.

BE IT FURTHER RESOLVED, that said Titles shall act as an express repeal of Title 3; Chapter 3; Title 5; Title 7; Part I, Chapter 3 and Title 7, Part III, Chapter 9; Title 8; those portions of Title 9 not already repealed, Title 10; Title II-Traffic Regulations; and all Forms Sections of the old Tribal Code, and that the same shall no longer be the law of the reservation as of the effective date of Titles III, IV, V, VI, VIII, IX, X, XI, XII and XIII of the new Tribal Code.

BE IT FURTHER RESOLVED, that said Titles of the new Tribal Code shall become effective as of July 1, 1978.

BE IT FURTHER RESOLVED, that any provisions of the old Tribal Code not expressly repealed are hereby repealed by implication to the extent that such provisions are inconsistent with any Title of the new Tribal Code.

BE IT FURTHER RESOLVED, that such repeals by implication shall become effective as of the effective date of the new Code Title to which any inconsistent provision of the old Tribal Code relates.

4/7/78

BE IT FURTHER RESOLVED, that any provision of the old Tribal Code not expressly or impliedly repealed by the new Tribal Code shall remain in full force and effect.

CERTIFICATION

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members of whom 12, constituting a quorum, were present at a meeting, duly and regularly called, noticed, convened and held this 7th day of April, 1978, regular session; and that the foregoing resolution was duly adopted at such meeting by an affirmative vote of 10 for, 2 against, 0 not voting, and 3 absent.

/s/ Hazel Garreaux

Hazel Garreaux, Secretary

Cheyenne River Sioux Tribal Council

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ENROLLMENT COMMITTEE REPORT by Delma Traversie, Chairman:

The following birth certificates were presented for automatic enrollment with the Cheyenne River Sioux Tribe:

1. Farlee, Jaime Lee, born 3/29/77 - 11/64 Indian
Father: Robert Farlee, white
Mother: Judy Ann Jewett, 11/32 Cheyenne River
2. Ganje, Michael David, born 5/3/77 - 5/64 Indian
Father: David DeWitt Ganje, white (deceased)
Mother: Colette Norma Opp, 5/32 Cheyenne River
3. King, Carla Marie, born 5/4/56 - 9/32 Indian
Father: - -
Mother: Betty Lou Dupree, 9/16 Cheyenne River
4. Knife, Dion Luther, born 9/13/72 - 13/16 Indian
Father: Theodore Forrest Knife, 4/4 Cheyenne River
Mother: Elverna Dupris, 5/8 Cheyenne River
5. Knight, Robbie Leigh, born 10/24/77 - 15/32 Indian
Father: Thomas Wallace Knight, 9/16 Cheyenne River
Mother: Deanna F. Laundreaux, 3/8 Cheyenne River
6. Lafferty, Joseph Alan, born 5/16/77 - 11/32 Indian
Father: - -
Mother: Norma Alice Lafferty, 11/16 Cheyenne River
7. Marrowbone, Meredith Jo, born 6/11/77 - 4/4 Indian
Father: Marle Whitney Marrowbone, 4/4 Cheyenne River
Mother: Judy An Long Nandan, 4/4 Cheyenne River

Sec. 9-1-8 Jury Trial.

If properly demanded, a party is entitled to a trial by jury in any proceeding in which any genuine controverted question of fact arises, or the trial judge may order a jury trial on any such issue on his own motion. Otherwise all proceedings under this Probate Code shall be handled by a trial judge or the Clerk, as is appropriate.

Sec. 9-1-9 Oath or Affirmation on Filed Documents.

Except as specifically provided in this Probate Code, every document filed with the Court under this Probate Code shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and the penalties for perjury shall follow deliberate falsification thereof.

Sec. 9-1-10 Notice.

(1) If notice of a hearing on any petition or other matter is required, and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(a) by mailing a copy thereof at least 14 days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known; or

(b) by delivering a copy thereof to the person being notified personally at least 14 days before the time set for the hearing; or

(c) if the address, or identity of any person is not known and cannot be ascertained by reasonable diligence, by posting a copy of the notice in at least three(3) conspicuous public places on the Reservation at least 14 days before the time set for the hearing.

(2) The Court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice shall be made at or before the hearing and filed in the proceeding.

(4) A person, including a guardian ad litem, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding.

Sec. 9-1-11 Renunciation of Succession.

A person (or his personal representative) who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument or person designated to take pursuant to a power of appointment exercised by a testamentary instrument may renounce in whole or in part the succession to any property or interest therein by filing a written instrument with the Court not later than 6 months after the decedent's death or the time at which it is determined that the person is entitled to take property if such is not known at the time of death. The instrument shall (i) describe the property or part thereof or interest therein renounced, (ii) be signed by the person renouncing and (iii) declare the renunciation and the extent thereof. Upon proper renouncement, the interest renounced passes as if the renouncing person had predeceased the decedent or donee.

Sec. 9-1-12 Effect of Divorce, Annulment, and Decree of Separation.

A person who is divorced from a decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of the Probate Code.

Sec. 9-1-13 Effect of Homicide on Intestate Succession, Wills, Joint Assets, Life Insurance and Beneficiary Designations.

(1) A surviving spouse, heir or devisee who criminally and intentionally kills the decedent is not entitled to any benefits under the will or under this Probate Code, and the estate of the decedents passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(2) Any joint tenant who criminally and intentionally kills another joint tenant thereby effects a severance of

the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy or other contractual arrangement who criminally and intentionally kills the principle obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy or other contractual arrangements, and it becomes payable as though the killer had predeceased the decedent.

(4) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(5) A final judgment of conviction of an offense containing the elements of criminal and intentional killing is conclusive for purposes of this section. In the absence of a conviction of criminal and intentional killing, the Court may determine by a preponderance of evidence whether the killing was criminal and intentional for purposes of this section.

II. INTESTATE SUCCESSION

Sec. 9-2-1 Intestate Estate.

When any member of the Tribe dies without disposing of all or part of his property by a valid will, all such property not so disposed will pass in accordance with the laws of Intestate Succession of the State of South Dakota.

III. PROBATE AND INTESTATE SUCCESSION

Sec. 9-3-1 Petition.

(1) When any member of the Tribe dies leaving an intestate estate subject to the jurisdiction of the Cheyenne River Sioux Tribal Court, any person claiming

to be an heir of the decedent, or the Tribe, may petition the Court for a determination of the heirs of the decedent and for distribution of such property. The petition shall contain the names and addresses of all persons known to the petitioner who may be entitled to share in the distribution of the estate.

(2) Whenever there is a valid will probated by the Court which does not dispose of all of the decedent's property, a determination of the heirs entitled to such property and its distribution shall be made by the Court at or before the time the remainder of the estate is distributed without the necessity of a separate petition and proceeding.

Sec. 9-3-2 Administrator of Intestate Estate.

(1) If an executor is appointed over a decedent's property which is disposed of by a valid will, such person shall likewise assume authority over the decedent's intestate estate and administer it with the rest of the decedent's estate.

(2) Whenever it reasonably appears that such is necessary to the preservation, administration and/or distribution of a decedent's intestate estate, the Court shall appoint an administrator over the estate. It shall not be necessary to appoint an administrator if the value of the decedent's property appears to be less than \$1,000.00 in value, no problems in administering the estate are foreseen, and no interested party requests that one be appointed.

(3) The following persons, if legally competent, shall be afforded priority in order of their listing for appointment as administrator; the surviving spouse, children in descending order of age, other blood relatives in order of their closeness of relationship; any adult tribal member.

(4) The duties of the administrator shall be:

(a) to take possession of all property of the decedent subject to this Probate Code;

(b) within one month of his appointment make an inventory and appraisal of such property and file it with the Court;

(c) determine and file with the Court a list of all known relatives of the decedent, their ages, and their relationship to the decedent;

(d) subject to the approval of the Court ascertain and pay all of the debts and legal obligations of the decedent;

(e) prosecute and defend actions for or against the estate;

(f) distribute the estate in accordance with the order of the Court and file receipts with the Court showing distribution of the estate.

(5) The Administrator shall file a bond in an amount to be set by the Court to insure his faithful, honest performance of his duties as administrator. Unless otherwise made to appear necessary or desirable, no bond shall be required of an administrator who is the spouse or child of a decedent.

Sec. 9-3-3 Appointment of Administrator.

(1) Upon receipt of a petition to administer an intestate estate, the clerk shall schedule a hearing at which an administrator will be appointed. Said hearing shall be scheduled far enough in advance to allow the required notice to be made.

(2) Notice of the hearing shall be made by the petitioning party or by the posting at the Tribal Administration Building.

(3) The Court shall determine who is the proper person to appoint as administrator, and if such person manifests his willingness to serve, order his appointment as such.

Sec. 9-3-4 Oath of Administrator; Letters of Administration.

(1) Upon his appointment as administrator, the person appointed shall take an oath to be prescribed by the Court to the effect that he will faithfully and honestly administer the estate.

(2) Upon taking the oath and filing the bond, if any is required, the administrator shall be granted Letters of Administration as proof of his appointment.

Sec. 9-3-5 Notice to Creditors.

The administrator of the estate or the Clerk if no administrator is appointed shall cause notices to creditors to be posted in at least three conspicuous places on the Reservation and published at least twice in a publication of general distribution on the Reservation. Said notice shall state that creditors have 90 days from the date of the first publication of the notice to present their claims to the administrator or Clerk and that only those claims so presented shall be paid by the estate. Notice by mailing shall also be given to each creditor of whom the administrator or Clerk has actual knowledge.

Sec. 9-3-6 Payment of Creditors.

(1) Payment of creditors of the decedent shall be made by the administrator only upon the order of the Court after determining the validity of the claims by affidavit or personal testimony of the claimant.

(2) All just claims of creditors allowed by the Court shall be paid before distribution of the estate but only after payment of the family allowance and homestead allowance as provided herein.

Sec. 9-3-7 Accounting.

Prior to the distribution of every estate for which an administrator has been appointed, such administrator shall render an accounting to the Court for its approval, of all receipts and disbursements from the estate, showing the present status of the estate and that it is ready for distribution, and also showing the computation of any attorney's and/or administrator's fees involved

for which approval for payment is sought. In estates in which no administrator is appointed, the Clerk shall account to the Court for all transactions relating to the estate.

Sec. 9-3-8 No Taker.

If there is no taker under the provisions of this part the intestate estate passes to the Cheyenne River Sioux Tribe.

Sec. 9-3-9 Advancements.

If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in contemporaneous writing by a decedent or acknowledged in writing by the heir to be an advancement. For this purpose, the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

Sec. 9-3-10 Debts to Decedent.

A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

Sec. 9-3-11 Status of Heirs.

No person is disqualified to take as an heir because he or a person through whom he claims is not a member of the Cheyenne River Sioux Tribe or because he does not live on the Reservation.

IV. WILLS

Sec. 9-4-1 Who May Make a Will.

Any person 18 or more years of age who is of sound mind may make a will.

Sec. 9-4-2 Execution.

Except as provided for holographic wills, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction; and shall be signed by at least two (2) persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

Sec. 9-4-3 Holographic Will.

A will which does not comply with the next preceding section is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

Sec. 9-4-4 Self-Proved Will.

An attested will may, at the time of its execution or at any subsequent date, be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before a notary public or Tribal judge and evidenced by the notary or judge's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

THE STATE OF _____

COUNTY OF _____

We, _____,

and _____ the testator and the

witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of

his knowledge the testator was at the time 18 or more years of age, of sound mind and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____, and _____ witnesses, this _____ day of _____, 19____.

(Signed)

(SEAL)

(Official capacity of Officer)

Sec. 9-4-5 Who May Witness.

(1) Any person generally competent to be a witness may act as a witness to a will.

(2) A will or any provision thereof is not invalid because the will is signed by an interested witness.

Sec. 9-4-6 Choice of Law as to Execution.

A written will is valid if execution in compliance with this Probate Code or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domi-

ciled or has a place of abode.

Sec. 9-4-7 Revocation by Writing or by Act.

A will or any part thereof is revoked:

(1) By a subsequent will which revokes the prior will in whole or in part expressly or by inconsistency; or

(2) By being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose in his presence and by his direction.

Sec. 9-4-8 Revocation by Divorce; No Revocation by Other Changes of Circumstances.

If, after executing a will, the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

Sec. 9-4-9 Revival of Revoked Will.

(1) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.

(2) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

Sec. 9-4-10 Incorporation by Reference.

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

Sec. 9-4-11 Events of Independent Significance.

A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

Sec. 9-4-12 Requirement That Devisee Survive Testator by 100 Hours.

A devisee who does not survive the testator by 100 hours is treated as if he predeceased the testator, unless the will of the decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

Sec. 9-14-13 Simultaneous Death.

(1) Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise.

(2) Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

(3) Where there is no sufficient evidence that two joint tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one-

half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(4) Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(5) These provisions on simultaneous death shall not apply in cases where the decedent has made provision for a different distribution in a will, trust, deed or contract of insurance.

Sec. 9-4-14 Rules of Construction and Intention.

The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this Probate Code apply unless a contrary intention is indicated by the will.

Sec. 9-4-15 Construction That Will Passes All Property; After-Acquired Property.

A will is construed to pass all property which the testator owns at his death including property acquired after the execution of the will.

Sec. 9-4-16 Anti-Lapse; Deceased Devisee; Class Gifts.

If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, the issue of the deceased devisee who survive the testator by 100 hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree then those of more remote degree take by representation. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.

Sec. 9-4-17 Failure of Testamentary Provision.

(1) Except as provided in the next preceding section if a devisee other than a residuary devisee fails for any reason, it becomes a part of the residue.

(2) Except as provided in the next preceding section if the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

Sec. 9-4-18 Exercise of Power of Appointment.

A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

Sec. 9-4-19 Non-Exoneration.

A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

Sec. 9-4-20 Construction of Generic Terms to Accord With Relationship as Defined for Intestate Succession.

Half-bloods, adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationship for purposes of intestate succession.

Sec. 9-4-21 Ademption by Satisfaction.

Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part only if the will provides for deduction of the lifetime gift or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

V. PROBATE OF WILLS

Sec. 9-5-1 Petition for Letters Testamentary.

A petition for Letters Testamentary may be made by any person having possession of a decedent's will. The petition must be in writing, signed by the petitioner, and shall state the basis for the Court's jurisdiction, the names of the heirs of the decedent, if known, and the name or names of any person specified in the will as executor and the address of such person if known. The original copy of the will shall be submitted to the Court with the petition.

Sec. 9-5-2 Qualification of Executor.

The Court shall appoint an executor to administer the estate. The executor shall be a competent adult Tribal member and preference shall be given, if such persons are otherwise qualified, to the person named in the will as such, followed by the surviving spouse or child of the decedent with preference given in descending order of age.

Sec. 9-5-3 Appointment of Executor.

(1) Upon receipt of a petition for Letters Testamentary, the clerk shall schedule a hearing at which an executor will be appointed and Letters Testamentary authorized. The hearing shall be scheduled so that adequate notice to interested persons can be made.

(2) Notice of the hearing shall be made by the petitioning party to all persons named as takers under the will, and to all known heirs of the decedent if different from the named takers, and also by posting notice in a conspicuous place in the Tribal Administrative Building.

(3) At the hearing, the Court shall first determine the validity of the decedent's will and then appoint an executor to administer the estate according to the terms of this Probate Code and the decedent's will.

(4) Letters Testamentary shall be granted to the person appointed as executor upon his taking an oath, to be prescribed by the Court, to the effect that he will faithfully and honestly administer the estate, and upon his filing of bond, if required.

Sec. 9-5-4 Duties of Executor, Bond.

The duties of the executor shall be the same as those prescribed in this Probate Code for the Administrator of an intestate estate, and he shall file a bond in a like manner and subject to the same exceptions.

Sec. 9-5-5 Creditors.

Notice to creditors, determination of the validity of claims, and payment of claims shall be handled as prescribed for intestate estates.

Sec. 9-5-6 Accounting.

Prior to the distribution of the estate remaining after payment of all just claims and priority payments, the executor shall submit to the Court for approval an accounting of all receipts and disbursements for the estate, showing the present status of the estate and that it is ready for distribution, and also showing the computation of any attorney and/or executor's fees involved for which approval for payment is sought.

Sec. 9-5-7 Distribution; Closing Estate.

(1) When it is made to appear to the Court that an estate is ready to be distributed, the Court shall order such distribution according to the provisions of the decedent's will or the rules of intestate succession, whichever is applicable, and according to the rules set forth in this Probate Code.

(2) The estate shall be closed and the personal representative of the estate dismissed and his bond, if any, released upon filing with the Court receipts showing that the estate is fully distributed, and also upon filing the personal representative's affidavit that the estate is fully administered and ready to be closed.

Sec. 9-5-8 Distribution; Order in Which Assets Appropriated; Abatement.

(1) Except as provided in subsection (2) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order; (a) property not disposed of by the will; (b) residuary devises; (c) general devises; (d) specific devises. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of

the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(2) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(3) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

Sec. 9-5-9 Property Discovered After Estate Closed.

An estate may be reopened whenever necessary to dispose of a decedent's property discovered after his estate has been closed. The Court shall order distribution of the property to the person or persons entitled thereto after making whatever orders appear necessary to assure a just participation of the after discovered property in the expenses of the estate.

Sec. 9-5-10 Personal Representative's and Attorney's Fees.

(1) An administrator or executor may receive a fee of 5% of the value of the gross estate but not less than \$50.00 to be paid from the estate prior to final distribution of the estate.

(2) An attorney who represents the personal representative of an estate for purposes of administering the estate may be paid from the estate a fee of 5% of the gross estate, but not less than \$50.00. A greater amount may be approved upon a showing of extraordinary service to the estate.

VI. FAMILY RIGHTS

Sec. 9-6-1 Right to Elective Share.

If a married Tribal member domiciled on the Reservation dies, the surviving spouse has a right to elect to take an

elective share of one-third of the estate of the decedent, less funeral and administration expenses, family allowance and enforceable claims against the estate, plus the value of all property in excess of \$1,000.00 transferred by the decedent to any person other than the surviving spouse in the three years preceding his death to which the surviving spouse has not joined by written consent.

Sec. 9-6-2 Right of Election Personal to Surviving Spouse.

The right of election of the surviving spouse may be exercised only during his lifetime by him. In the case of an incompetent or protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his property are pending, after finding that exercise is necessary to provide adequate support for the protected person during his probable life expectancy.

Sec. 9-6-3 Waiver of Right to Elect and of Other Rights.

The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

Sec. 9-6-4 Proceeding for Elective Share; Time Limit.

(1) The surviving spouse may elect to take his elective share in the estate by filing in the Court and mailing or delivering to the personal representative a petition for the elective share within 6 months after the publication of notice to creditors for filing claims which arose before the death of the decedent. The Court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

(2) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the estate whose interests will be finally determined by the Court.

(3) The surviving spouse may withdraw his demand for an elective share at any time before entry of a final determination by the Court.

(4) After notice and hearing, the Court shall determine the amount of the elective share and shall order its payment from the assets of the estate or by contribution as appears appropriate under the following section. If it appears that a fund or property included in the estate has not come into the possession of the personal representative the Court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the Court may be enforced as necessary in a suit for contribution or payment.

Sec. 9-6-5 Effect of Election on Benefits by Will.

(1) An election by a surviving spouse does not affect the right of such spouse to participate in a family allowance but the value of any part of the estate passing to the surviving spouse by testate or intestate succession shall, unless renounced by the spouse in his petition, be counted against his elective share.

(2) When an election to take an elective share has been made and there is insufficient property in the estate which is not specifically disposed of to pay the elective share, liability for payment of the elective share shall be equitably apportioned among the other recipients of the estate in proportion to the value of their interests therein.

(3) Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contributions to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as

of the time transferred.

Sec. 9-6-6 Omitted Spouse.

(1) Notwithstanding the provisions of Sec. 9-6-1 of this Code, if a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will. The intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(2) In satisfying a share provided by this section, the devises made by the will abate as provided in the section of this Probate Code which concerns "abatement."

Sec. 9-6-7 Pretermitted Children.

(1) If a testator fails to provide in his will for any of his children living or born or adopted after the execution of his will, the omitted child receives a share in the estate equal in the value to that which he would have received if the testator had died intestate unless:

- (a) it appears from the will that the omission was intentional; or
- (b) when the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child; or
- (c) the testator provided for the child by transfer outside the will. The intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(2) If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

(3) In satisfying a share provided by this section, the devises made by the will abate as provided in the section of the Probate Code which concerns "abatement."

Sec. 9-6-8 Homestead Allowance.

A surviving spouse of a decedent who was domiciled on the reservation is entitled to a homestead allowance of \$2,500.00. If there is no surviving spouse, each minor dependant child of a decedent is entitled to a homestead allowance amounting to \$2,500.00 divided by the number of minor dependant children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. The homestead allowance is in addition to any share passing to the surviving spouse or minor dependent child by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share.

Sec. 9-6-9 Exempt Property.

In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled on the Reservation is entitled from the estate to a value not exceeding \$2,500.00 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than \$2,500.00, or if there is not \$2,500.00 worth of exempt property in the estate, if any, to the extent necessary to make up the \$2,500.00 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided by intestate succession or by way of elective share.

Sec. 9-6-10 Family Allowance.

In addition to the right to the homestead allowance and exempt property, if the decedent was domiciled on the Reservation the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid a lump sum or in periodic installments. It is payable

to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody as their needs may appear. The family allowance is exempt from and has priority over all claims except for the homestead allowance.

The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided by intestate succession or by way of elective share. The death of any person entitled to family allowance terminates his right to allowances not yet paid.

Sec. 9-6-11 Source, Determination and Documentation.

If the estate is otherwise sufficient, property specifically devised shall not be used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument of deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. He may determine the family allowance in a lump sum not exceeding \$300.00 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the Court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

TITLE X
CHEYENNE RIVER SIOUX TRIBAL
CODE OF CREDITORS RIGHTS
AND RESPONSIBILITIES

1. FORECLOSURES OF SECURED OBLIGATIONS

Sec. 10-1-1 Self-Help Remedies Eliminated.

(1) All self-help remedies for the recovery of real or personal property secured to insure payment of obligations are hereby declared unavailable except as otherwise specifically provided herein.

(2) This section shall not be construed to prevent the voluntary surrender of secured property to a creditor by a debtor; provided, however, that such voluntary surrender occurs at the time the property is taken. All contractual provisions for such executed in advance of the need therefore shall be of no effect.

Sec. 10-1-2 One Action to Foreclose Security Interest.

(1) There can be one action in the Tribal Court to recover any debt or enforce or foreclose any right secured by a mortgage or other security interest on non-trust real or non-trust personal property situated or located on the Reservation, which action must be in accordance with the procedures outlined herein.

(2) Notwithstanding the provisions next above, if the debt for which the encumbrance is held is not all due, but is payable in installments, whether such debt is evidenced by one or more principal notes or otherwise, such encumbrance may be foreclosed, at the election of the holder thereof, for the installment or installments due or other charges which are to be paid by the mortgagor, and the Court may by its judgment direct the sales of the encumbered property or of the equity of the defendants therein, or so much thereof as may be necessary to satisfy the amount due, and such encumbrance shall otherwise remain in full force and effect and the holder thereof shall have the right to foreclose on the balance or any part thereof.

Sec. 10-1-3 Action to Foreclose Interest in Personal Property.

(1) An action to foreclose a security interest in non-trust personal property shall be commenced by filing a complaint in the Tribal Court.

(2) The Tribal Court shall determine the issues presented and may, by its judgment, direct the sale of the encumbered property, or so much thereof as is necessary, and direct the proceeds of the sale to the payment of the costs of court, the expenses of such sale and to the amount due the plaintiff. If it appears from the police officer's return on the sale that the proceeds thereof are insufficient and that an amount still remains due, the Court shall direct entry of a judgment for such balance against the defendant or defendants.

(3) If it is reasonably made to appear after the complaint is filed that the collateral is in imminent danger of being concealed, removed from the Reservation, or otherwise disposed of in a manner inconsistent with the security interest, the Court may order the person having possession or control over such property to appear and show cause why such property should not be taken into the custody of the Court or other security provided to prevent the improper disposal of the collateral.

(4) Sale of property under the Court's judgment shall be conducted in the manner provided for execution sales under Rule 36 of the Cheyenne River Rules of Civil Procedure.

Sec. 10-1-4 Action to Foreclose Mortgage.

(1) An action to foreclose a mortgage or other security interest in non-trust real property shall be commenced by filing a complaint in the Tribal Court.

(2) A complaint to foreclose a security interest in real property shall name as parties all persons who claim an interest in said property as a result of a proper recording of such interest in either the Tribal or County records, or both, as applicable. No interest of the Cheyenne River Sioux Tribe, whether recorded or not, may be affected in any action in which the Tribe is not a party by its own

affirmative action or consent. Interests in the secured property which are not recorded may be affected as if recorded and the owner thereof made a party.

(3) The Tribal Court shall determine the issues presented and may, by its own judgment, direct the sale of the encumbered property or so much thereof as is necessary, and direct the application of the proceeds to the costs of Court, the expenses of sale, and to the amount due the plaintiff. If it appears from the police officer's return on the sale that the proceeds thereof are insufficient and that an amount still remains due, the Court shall direct the entry of judgment for such balance against the defendant or defendants as provided below.

Sec. 10-1-5 Sale of Property - Notice.

(1) Before the sale of real property subject to a decree of foreclosure and order of sale, notice thereof must be given as follows: by posting written notice of the time and place of the sale giving a specific legal and general description of the property for 20 days in at least four public places on the Reservation, including one copy posted at the Tribal Headquarters, one copy posted in the post office nearest the property to be sold, one copy posted on the property to be sold, and one copy posted at the Tribal Courthouse.

(2) If ever there is a sale of property conducted without at least good faith and substantial compliance with the notice requirements as set forth herein, said sale may be declared void and of no effect by the Tribal Court.

Sec. 10-1-6 Conduct of Sale.

(1) All sales of property under decrees of foreclosure and orders for sale must be made at auction, conducted at the Tribal Courthouse, to the highest bidder, between the hours of 9:00 a.m. and 5:00 p.m. on any business day.

(2) Once sufficient property has been sold to satisfy the judgment plus the costs of court and of the sale, no more property shall be sold.

(3) The person conducting the sale may not be a purchaser or be interested in any purchase at such sale.

(4) If the property being sold consists of several known lots or parcels, they must be sold separately. The judgment debtor, if present at the sale, may direct the order in which the property shall be sold when such property consists of several known lots or parcels. If a third person claims an interest in part of the property to be sold, he may require that such part be sold separately.

(5) If a purchaser refuses to pay the amount bid by him for property sold to him at sale, the officer conducting the sale may again sell the property to the highest bidder and if any loss be occasioned thereby, the officer may recover the amount of such loss, plus costs, from the bidder so refusing, in the Tribal Court. When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

Sec. 10-1-7 Return on Sale.

(1) The Tribal police officer conducting the sale shall make a return thereon to the Tribal Court reciting all of the details of the sale.

(2) A certified copy of such return together with a certified copy of the Court's order directing said sale shall be filed by the purchaser in the appropriate county record's office.

Sec. 10-1-8 Title to Real Property.

(1) On a sale of real property, the purchaser is substituted for, and acquires all of the right, title, interest and claim of the judgment debtors thereto.

(2) The property so acquired is subject to redemption as provided herein.

(3) At the time payment for the sale is made, the officer conducting such must give to the purchaser a Certificate of Sale containing: a) the name of the purchaser, b) the name of the judgment debtor, c) the particular legal description of property sold, d) the price bid for each particular lot or parcel (if applicable), e) the total price paid, and f) notice that the sale is subject to redemption.

(4) The officer conducting the sale shall provide the purchaser with sufficient certified copies of the Certificate of Sale that the purchaser may file one copy with the office of the Recorder in each county where the property is located. The purchaser shall be provided with one certified copy for his own records and one copy shall be filed with the officer's return on the sale in the Tribal Court.

(5) If the purchaser of real property sold pursuant to an order of sale, or any successor in interest, should be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid plus interest at the rate of 8% per annum from the judgment creditor.

(6) If the purchaser of real property sold pursuant to an order of sale, or any successor in interest, fails to obtain possession of the property as a consequence of irregularity in the proceedings related to the sale, or because the property sold was not subject to execution and sale, the Court having jurisdiction thereof must, after notice and on motion of such party in interest, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser, with interest thereon at the rate of 8% per annum, and the judgment so revived has the same force and effect as would the original judgment as of the date of revival.

Sec. 10-1-9 Redemption.

(1) All real property sold as provided herein is subject to redemption, in the manner hereinafter provided, by the judgment debtor or any successor in interest in the whole or any part of the property.

(2) The judgment debtor or redemptioner may redeem real property from the purchaser within six months after the sale by paying the purchaser the purchase price together with interest thereon at the rate of 8% per annum from the date of sale to the date of redemption, together with the amount of any assessments or additional costs which the purchaser may have paid thereon after the date of the purchase.

(3) Written notice of redemption must be given to the Tribal Court and a duplicate filed with the office of the County Recorder in each county in which the property is situated.

(4) If the debtor redeems, the effect of the sale is terminated.

(5) Upon redemption by the debtor, the person to whom the payment is made must execute and deliver to him sufficient copies of a Certificate of Redemption acknowledged and proved before an officer authorized to take acknowledgments of conveyances of real property. Copies of such certificates shall be filed at the appropriate county recorder's office.

(6) If no redemption is made within six months, the purchaser or his assignee is entitled to a conveyance by means of a Tribal Police Officer's Deed at the expiration of such time. Such Deeds shall be recorded at the appropriate county recorder's office.

(7) Redemption payment must be made in U.S. currency or by certified or Cashier's check and be made to the purchaser or for him to the officer who made the sale or his successor in office.

(8) A judgment debtor or successor in interest desiring to redeem property must present to the person from whom he seeks to redeem or the officer: a) a certified copy of the judgment and order of sale under which he claims a right to redeem, and b) his own affidavit that he is the person entitled to redeem and showing the amount due to effect the redemption.

(9) Until expiration of the time for redemption, the Court may restrain the commission of waste or changing the character of the property, but it shall not be waste for the person entitled to possession of the property to continue to use it in the manner it had been previously used, or use it in the ordinary course of husbandry, or to make necessary repairs thereon, or to have reasonable enjoyment of the property.

(10) The purchaser, from the time of sale until redemption, is entitled to receive from the tenants in possession the rents of the property sold or the value of

the use and occupation thereof. However, when any rents or profits have been received by the purchaser or his assigns from the property thus sold, prior to redemption the amount of such rents and profits shall be a credit on the redemption money to be paid. The judgment debtor or person entitled to redeem has the right, prior to the expiration of the time for redemption, to demand of the purchaser or his assigns a written and verified statement of the amount of such rents and profits received and/or assessments or costs paid by the purchaser during the period of redemption. If such purchaser or his assign fails or refuses for a period of one month to give such statement, the redemption may, within 60 days of such demand, bring an action in the Tribal Court to compel an accounting and disclosure of such rents and profits, and until fifteen days after the final determination of such action, the right of redemption is extended to such redemptioner.

Sec. 10-1-10 Surpluses and Deficiencies From Sales.

(1) If there is surplus money remaining after the payment of the costs of court and of the sale and payment of the judgment creditor, such funds shall be distributed by the Court to the judgment debtor or other person entitled thereto.

(2) A deficiency judgment may be entered by the Court in a case involving the foreclosure and sale of real property whenever the amount due under the secured indebtedness plus costs of the court and of the sale exceed the reasonable value of the property at the time of sale. The Court is not bound by the price for the property received at the sale but may take evidence to determine the actual reasonable value.

II. ACTIONS TO RECOVER POSSESSION OF REAL PROPERTY

Sec. 10-2-1 Self-Help Remedies Forbidden.

Except in the case where a person in possession voluntarily surrenders such possession to another claiming a paramount right, self-help remedies to secure possession of real property are forbidden except as otherwise provided herein.

Sec. 10-2-2 "Forcible Entry" Defined.

A person commits a forcible entry whenever he either:

(1) Unlawfully breaks open or by any other type of unauthorized opening of the doors, windows, or other parts of a house or other residential dwelling or by fraud, intimidation or stealth, or by any kind of unlawful violence or circumstances of terror, enters upon or into any real property; or

(2) After entering peaceably upon real property, unlawfully turns out by force, threats, or menacing conduct the party in actual possession.

Sec. 10-2-3 "Forcible Detainer" Defined.

A person commits a forcible detainer whenever:

(1) By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or

(2) In the nighttime or in the absence of the occupants of any real property, unlawfully enters thereon, and, after demand made for the surrender thereof, refuses for a period of three days to surrender the same to the former occupant. The occupant of real property within the meaning of this subsection is one who within five days preceding such unlawful entry was in the peaceable and undisturbed possession of such property.

Sec. 10-2-4 "Unlawful Detainer" Defined.

A person commits an unlawful detainer if, being a tenant of real property with a term of less than his life, he either:

(1) Continues in possession, in person or by subtenant, of the property or any part thereof, after the expiration of the term for which it is let to him. In all cases where real property is leased or rented for a specified term or period, or by express or implied contract, whether written or parole, the tenancy shall be terminated without notice at the expiration of such specified term or period; or

(2) Having leased or rented property for an indefinite time with monthly or other periodic rent reserved, he continues in possession thereof in person or by subtenant after the end of such month or period after having been served with notice requiring him to quit the premises at the end of such month or period, such notice having been served upon him fifteen or more days prior to the end of such month or period, or in cases of tenancies at will, where he remains in possession of such premises after the expiration of a notice of not less than five days; or

(3) When he continues in possession, either in person or by subtenant, after default in the payment of any rent and after a notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises shall have remained uncomplied with for a period of three days; or

(4) When he assigns or sublets the leased or rented property contrary to the covenants in the lease or contract, or commits or permits waste thereon, or when he sets up or carries on thereon any unlawful business, or when he suffers, permits or maintains on or about said premises any nuisance, and remains in possession after service upon him of a notice to surrender the premises within three days; or

(5) Continues in possession in person or by subtenant, after a neglect or failure to perform any material condition or covenant of the lease or rental agreement under which the property is held, other than those hereinbefore mentioned, and after notice in writing requiring in the alternative the performance of such conditions or covenants or the surrender of the property served upon him, and, if there is a subtenant in actual occupation of the premises, also upon such subtenant, shall remain uncomplied with for five days after service thereof. Within the five-day period, any subtenant, or mortgagee of the term, or other person interested in the continuance of the term may perform such condition or covenant and thereby save the lease or agreement from forfeiture, unless such condition or covenant cannot then be performed or cannot be performed by anyone except the original tenant. If the broken covenant or condition is not capable of remedial performance after its breach, the required notice need not list such performance as an alternative.

Sec. 10-2-5 Notice - How Served.

The notices required by the preceding section may be served either:

(1) By delivering a copy to the tenant personally;
or

(2) If he is absent from his place of residence, or from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place and sending a copy thereof through the mail addressed to the tenant at his place of residence or place of business; or

(3) If such place of residence or business cannot be ascertained or a person of suitable age or discretion cannot be found there, then by fixing a copy in a conspicuous place on the property and also delivering a copy to a person there residing, if such person can be found, and also sending a copy through the mail addressed to the tenant at the place where the leased property is situated.

(4) Service on a subtenant may be made in the same manner.

Sec. 10-2-6 Action to Regain Possession.

(1) The Tribal Court shall have jurisdiction to hear and decide actions to recover possession of both trust and non-trust property as a result of an alleged forcible entry, forcible detainer or unlawful detainer in an accelerated manner as provided herein. Any other action to regain possession of property may at the discretion of the judge, but need not, be handled in an accelerated manner as provided herein.

(2) In an accelerated proceeding allowed herein, the Court shall endorse on the summons the number of days within which the defendant has to answer, which shall not be less than three nor more than thirty days from the date of service. The time for reply to a counterclaim, if any, shall be deemed likewise shortened.

(3) At the close of the pleadings, the Court may advance hearing the matter on its trial calendar.

(4) The plaintiff's complaint, in addition to setting forth the facts and allegations on which he seeks to recover, may also set forth any circumstances of fraud, force or violence which may have accompanied the alleged forcible entry or forcible or unlawful detainer and claim damages therefor or compensation for the occupation of the premises, or both. When unlawful detainer is charged after default in the payment of rent, the complaint must state the amount of such rent.

(5) At the trial of any proceedings for forcible entry or forcible detainer the plaintiff shall only be required to show, in addition to the forcible entry or detainer complained of, that he was peaceably in the actual possession of the premises in question or was entitled to the possession at the time of the forcible detainer.

(6) In cases of tenancy of agricultural land where the tenant has held over and retained possession for more than sixty days after the expiration of his term without any demand of possession or notice to quit by the landlord or his successor in interest, the tenant shall be deemed to have the permission of the landlord or his successor to hold over for a full year under the same terms and conditions as the original tenancy, and such tenant shall not be guilty of an unlawful detainer for such period by reason of his holding over.

(7) The remedies available herein shall be available to a tenant to regain possession from a subtenant in appropriate cases.

(8) No person other than the tenant of the premises and subtenant if there is one in actual occupation of the premises at the time the action is commenced need be made a party defendant. Any person entering into possession with the consent of the tenant after an action is commenced for forcible entry or forcible or unlawful detainer shall be bound by such action, whether made a party or not.

(9) Residential leases and rental agreements shall be construed as contracts, and general principles of real property law shall not apply.

(10) No action under this Code may be maintained by one spouse against the other.

Sec. 10-2-7 Judgment.

(1) If at trial, whether with or without a jury, the finding is in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises to the plaintiff.

(2) In a proceeding for unlawful detainer for neglect or failure to perform any condition or covenant under a lease or agreement under which property is held, or after default of the payment of rent, the judgment shall declare the forfeiture of such lease or agreement.

(3) At trial, the finder of fact, whether the jury or the judge without a jury, shall also assess damages caused to the plaintiff by the forcible entry or forcible or unlawful detainer, including damage for waste by the defendant during the tenancy, if proved, and shall also find the amount of rent due if such is in issue.

(4) When the action is for unlawful detainer after defaulting in the payment of rent and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not issue until five days after the entry of judgment, within which time the tenant or any subtenant, or other party interested in the continuance of the term, may pay into the court for the landlord the amount of the judgment and costs and thereupon that portion of the judgment shall be satisfied and the tenant's estate shall be restored. However, if such payment is not made within five days, the judgment may be enforced in its full amount and for the possession of the premises. In all other cases, the judgment may be enforced immediately.

Sec. 10-2-8 Time for Appeal.

(1) The time in which an appeal, if any, may be taken from an action for forcible entry or forcible or unlawful detainer shall be ten days and the appellate court may, but need not, allow expedited handling of such appeal.

(2) Appeals in other actions to recover possession of real property shall be handled in the usual manner.

III. CANCELLATION OF ASSIGNMENTS OR OTHER PRIVILEGES
GRANTED BY THE TRIBE

**Sec. 10-3-1 Procedure for Cancellation of Assignments
or Other Privileges Granted by the Tribe.**

(1) The Tribal Court shall have jurisdiction over actions to cancel, suspend, or modify any assignments of land or any other privilege granted or administered by the Tribe to any person.

(2) Such actions shall be commenced by the filing of a complaint or petition on behalf of the Tribe by an officer, agent, or attorney for the Tribe. A copy of such petition shall be served upon the person or persons whose assignment or other right will be affected thereby.

(3) The person or persons whose assignment or other privilege is affected by the action proposed in the complaint or petition shall have twenty (20) days from the date of service to file an answer or otherwise respond to the action in writing. No further pleadings nor any discovery shall thereafter be allowed unless the Court shall otherwise order in the interests of preventing serious injustice. No default shall be entered for failure to answer or respond.

(4) Following the receipt of the answer or other response, or at the end of the twenty-day period, if no response is filed, the Clerk shall schedule a hearing before a judge of the Tribal Court and cause notice thereof to be served upon the Tribe and the other parties. The scheduling of such hearings shall be given priority on the Court calendar over all matters for which no priority in scheduling is established in this Law and Order Code. The Clerk shall cause notice of the date, time and place of the hearing to be served upon the affected party or parties no less than 48 hours prior to the time set for the hearing. If personal service is not reasonable possible, such notice may be served by mailing a copy to the person or persons involved at their last known address and by posting a copy of said notice on the property to be affected, if any.

Sec. 10-3-2 Hearings on Cancellation of Tribal Assignments or Other Privileges Granted by the Tribe.

(1) The Tribal Court may, by rule, establish procedures for hearings as provided herein.

(2) At the time set for the hearing, the Judge shall examine the complaint or petition and any response thereto and shall determine whether proper notice to all parties has been provided.

(3) The Court sitting without a jury shall then hear such evidence as the parties wish to present and render its decision thereon.

(4) The person or persons whose assignment or other privilege may be affected shall have the following rights:

(a) To be represented by a professional attorney admitted to practice before the Tribal Courts or by a lay counselor; provided, however, that such attorney or counselor is hired by the person or persons affected at their own expense;

(b) To confront, examine and cross-examine all evidence presented against him;

(c) To present evidence in his own behalf;

(d) To receive written notice of any decision of the Tribal Court affecting any assignment or other privilege granted by the Tribe. Such notice may be personally served or may be mailed to such person at his last known address and a copy thereof posted in a conspicuous place on the property affected, if an interest in the use of real property is involved.

Sec. 10-3-3 Grounds for Cancelling, Suspending, or Modifying Any Assignment or Other Privilege Granted by the Tribe.

(1) The Tribal Court shall cancel any assignment or other privilege granted by the Tribe if, after receiving a petition or complaint from the Tribe and conducting a hearing thereon, it reasonably appears that the person or persons to whom the assignment or privilege has been granted has sold, leased, assigned or otherwise transferred the assignment or privilege or the right to use or take advantage of the assignment or privilege to any other person or persons or entity contrary to the terms, conditions, or covenants contained in the grant of the assignment or privilege and that by so doing they have derived a pecuniary or other benefit therefrom.

(2) The Tribal Court may cancel, suspend or modify any assignment or other privilege granted by the Tribe, if, after receiving a petition or complaint and conducting a hearing thereon, it reasonably appears that the person or persons to whom the assignment or privilege has been granted has done any act contrary to the terms, conditions or covenants contained in the grant of the assignment or privilege.

(3) The Tribal Court may cancel, suspend or modify any assignment or other privilege granted by the Tribe if, after receiving a petition or complaint and conducting a hearing thereon, it reasonably appears that such cancellation, suspension or modification is reasonably necessary to promote, implement, or preserve some governmental or proprietary interest of the Tribe. When ordering the cancellation, suspension or modification of an assignment or other privilege by the Tribe for the reasons set forth in this subsection, the Court shall condition its order upon such terms for the harvesting of crops, removal of livestock, relocation of persons or things, or winding up of business as appears just under the circumstances.

Sec. 10-3-4 Imposition of Penalties or Damages.

Whenever the Tribal Court finds grounds for the cancellation, suspension or modification of an assignment or other privilege granted by the Tribe, it may order the party or parties affected thereby to pay or repay to the Tribe any fees or charges past due, any money or the value of any benefits received by such party as a result of his violating any of the terms, conditions, or covenants contained in the grant of the assignment or privilege, and may assess damages for damage done to any Tribal property or interest as a result of the wrongful or improper acts of the party involved. Said charges may be enforced as civil judgments.

Sec. 10-3-5 Privilege Defined.

As used herein, the term "privilege" shall include all business licenses, range unit leases and/or permits, and any benefit, right or advantage granted to or enjoyed by a particular entity, person or group of persons by reason of any official action of the Cheyenne River Sioux Tribe.

Sec. 10-3-6 Exceptions to Procedures.

The procedures contained herein shall not apply to the cancellation of fishing, hunting, or driver's licenses or in any other case where some other procedure is set forth in this Law and Order Code or other Tribal Ordinance.

TITLE XI

CHEYENNE RIVER SIOUX TRIBAL EXCLUSION AND REMOVAL CODE

Sec. 11-1-1 Statement of Tribal Council Determination and Intent.

The Cheyenne River Sioux Tribal Council hereby finds and determines that it is necessary to provide a means whereby the Tribe can protect itself, its members, and other persons living on the Reservation, from people whose presence on the Reservation is harmful to, or threatens harm to the peace, health, safety, morals and general welfare of the Reservation. Such action is deemed necessary as a result of the Tribes' interest in maintaining the aforementioned interests free from harm, to protect the cultural identity of the Tribe, and to protect those residents of the Reservation who may be imposed upon, harmed or otherwise disadvantaged. The procedures outlined herein are intended to provide procedural fairness to persons affected by these provisions while at the same time recognizing the need, in appropriate situations, to act immediately to remedy actual or threatened harm.

This Title is enacted pursuant to Article IV, Section K. of the constitution of the Cheyenne River Sioux Tribe.

Sec. 11-1-2 Persons Subject to Exclusion and Removal.

All persons who are not owners of land located within the exterior boundaries of the Reservation or who are not legally entitled to reside on said Reservation as a result of their having established a permanent domicile or permanent employment on said Reservation, may be excluded or removed from all or any portion of the Reservation as provided herein.

Sec. 11-1-3 Grounds for Exclusion and Removal.

A person subject to exclusion and removal as provided herein may be excluded or removed from the territory within the jurisdiction of the Cheyenne River Sioux Tribe upon any one or more of the following grounds:

- (1) Hunting, fishing or trapping on the Reservation without authority from the Tribe or contrary to the rules and regulations of the Tribe governing such activities;

(2) Trading or conducting business upon the Reservation in violation of Tribal regulations or regulations of the Secretary of the Interior;

(3) Prospecting upon the Reservation without authority from the Tribe or the Secretary of the Interior;

(4) Mining, cutting timber, grazing or other use, abuse or damage to Tribal property without authority from the Tribe or the Secretary of the Interior;

(5) Exploring for or excavating upon items, sites, or locations of historic, religious or scientific significance without authority from the Tribe or in violation of federal laws or regulations;

(6) Being or travelling upon the Reservation while afflicted by a communicable or contagious disease;

(7) Committing frauds, confidence games, or usury against Indian people residing on the Reservation, or inducing them to enter into grossly unfavorable contracts of any kind; or

(8) Doing or threatening to do any act upon the Reservation which seriously threatens the peace, health, safety, morals and general welfare of the Tribe, its members, or other persons living on the Reservation.

Sec. 11-1-4 Proceedings for Exclusion and Removal.

Upon complaint by the Attorney General's office of the Cheyenne River Sioux Tribe, the Tribal Court may determine whether a person has committed any of the aforementioned acts constituting grounds for exclusion and removal and whether or not the removal and/or exclusion of such person is to be ordered. Such proceedings shall be conducted as provided below. An order of exclusion and/or removal may be entered by the Tribal Court.

Sec. 11-1-5 Emergency Exclusion and Removal Without Prior Hearing.

(1) Whenever the Tribal Court finds that there is an immediate need to order the exclusion and/or removal of a person from the Reservation and that the granting of notice and opportunity to be heard to such persons prior to making

such order would cause a delay seriously detrimental to the interests of the Tribe, its members, or the other residents of the Reservation, the Tribal Court shall immediately order such exclusion and/or removal and provide the notice and opportunity for review of such decision outlined below.

(2) Whenever the exclusion and/or removal of a person is ordered without a prior hearing as provided herein, the person shall be served with a notice of such action. Such notice shall state the nature and extent of the exclusion and/or removal so ordered, shall state the reasons why no prior hearing was held, shall inform the person that once he has complied with the order, he may immediately petition the Tribal Court for a hearing to reconsider the order, that he may be represented by counsel at such hearing and present evidence in his own defense, and shall inform him that his compliance with such order may be enforced by Tribal or government police officers. A copy of the order shall be served with the notice and such service may be accomplished by personal service or, if personal service is not reasonably possible, by mailing to the person by United States registered mail, return receipt requested, at his last known address.

(3) Upon receipt of a petition for a hearing as provided next above, the Tribal Court shall schedule a hearing to allow the person to present evidence. Such hearing shall be held within two weeks of the receipt of the petition, provided, however, that the order of exclusion and/or removal shall remain in force pending hearing and a decision thereon, except for purposes of attending a hearing.

(4) The Tribal Court shall, as a result of such hearing, either affirm, modify or rescind its previous order, and shall give the person notice of such decision in the same manner as provided for service of the notice above.

Sec. 11-1-6 Hearing on Exclusion and Removal in Non-Emergency Situations.

(1) In all other cases of exclusion and/or removal, the Tribal Prosecutor shall cause to be served a copy of the petition and a notice of hearing upon the person involved either by personal service, or if such service is

not reasonably possible, by registered mail, return receipt requested, at the last known address of such person. Such notice shall contain the date and time of the hearing, which shall be held not less than three days from the date of service, and shall further inform him that he may appear with counsel if he desires, and present evidence on his own behalf.

(2) The hearing on a proposed exclusion and/or removal may be held at a regular session of the Tribal Court.

(3) The Tribal Court shall hear the evidence presented and shall, if appropriate, order the exclusion and/or removal of the person. If the person is not present at such hearing, or if a decision thereon is not rendered until after the hearing, appropriate notice shall be served on the person in the manner provided above, informing him of the action of the Tribal Court and shall include a copy of any order of exclusion and/or removal which affects such person.

Sec. 11-1-7 Review of Orders of Exclusion and Removal.

(1) The Appellate Court shall have exclusive authority to hear appeals from orders of exclusion and/or removal after a hearing has been held thereon before the Tribal Court.

(2) The Tribal Appellate Court shall have authority to stay an order of exclusion and removal upon such conditions of security as it deems just only if all prior hearing remedies have been exhausted, and only if no substantial interest of the Tribe, its members, or other residents of the Reservation will be harmed thereby.

(3) All orders of exclusion and removal shall remain in full force and effect during periods of hearing or review unless stayed as provided herein.

Sec. 11-1-8 Enforcement of Orders of Exclusion and Removal.

All law enforcement officers of the Cheyenne River Sioux Tribe and the U.S. Government are hereby empowered to carry into effect any exclusion and/or removal order of the Tribal Court according to the terms of such order.

TITLE XII
CHEYENNE RIVER SIOUX TRIBAL
ANIMAL CODE

Sec. 12-1-1 Purpose.

The purpose of this Animal Code is to provide for the control of domestic animals other than those kept for livestock purposes; to protect the health, safety, and welfare of the inhabitants of the Reservation; and to protect the property and livestock of the inhabitants of the Reservation from damage or disease originating with animals.

Sec. 12-1-2 Definitions.

(1) "Animal Control Officer" shall mean a Cheyenne River Sioux Tribal police officer or other person designated by the Tribal Council as such, or an Animal Control Officer of Dewey or Ziebach Counties, State of South Dakota.

(2) "Livestock" shall mean domestic animals used or raised on a farm or ranch for resale or personal consumption but shall not include dogs or cats.

Sec. 12-1-3 Innoculation of Dogs or Other Animals.

(1) All dogs within the exterior boundaries of the Reservation shall be inoculated against rabies at least once every 12 months, and all dogs within the exterior boundaries of the Reservation shall, at all times, wear a numbered tag indicating the date of such inoculation. A record of numbers, dates of inoculation, and owners' names and addresses shall be kept by the Tribe.

(2) The Tribal Council may by resolution or ordinance adopt general or special regulations requiring inoculation of all dogs, cats, livestock and other animals for rabies or any other disease, and may require the tagging of such animals in a manner to be prescribed by such regulations.

Sec. 12-1-4 Restraint of Dogs and Other Animals.

(1) All dogs within any town or city within the exterior boundaries of the Reservation shall be required

to be kept on the premises of the home or business of the person who owns or cares for the dog and shall not be allowed outside such premises or allowed to run free except as specifically provided herein.

(2) The owner or person who cares for a dog on his premises may allow such dog outside of the premises of his home or business within town or city limits only upon the following conditions:

(a) Dogs must be restrained by a leash not longer than 10 feet in length. Such restraint must be sufficient to effectively prevent such dog from biting, molesting, or otherwise disturbing any other animal or person.

(b) Dogs confined within motor vehicles must be kept in a manner which prevents their escape from such vehicles but which does not constitute a cruel restraint of their ability to breath or move.

Sec. 12-1-5 Seizure of Animals.

(1) Any dog or other animal which is required to be innoculated and/or tagged, found on the Reservation not properly innoculated and/or tagged may be seized by an animal control officer and impounded.

(2) Any dog or other animal found running stray off the premises of its owner or otherwise in violation of Section 12-1-4 shall be seized by an animal control officer and impounded.

(3) Any animal upon which restrictions have been imposed under this Code or regulations promulgated hereunder may be seized by an animal control officer and impounded for violation of such restrictions.

(4) The Tribal Council may adopt regulations exempting from seizure and impoundment upon conditions designed to protect the safety and welfare of the Tribe and the inhabitants of the Reservation, animals being transported through the Reservation by tourists, common carriers and the like.

(5) Any animal seized under this Code shall be held for a period of 7 days and at the end of such time may be

exterminated unless redeemed by its owner or otherwise placed so as not to be in violation of this Code. An animal may be redeemed by its owner or other person on behalf of the owner, by paying a fee of \$2.00 per day or any part of a day, to cover the expense of impoundment.

(6) Extermination of any animal under this Code shall be accomplished by the most humane means possible under the circumstances and may be accomplished by an animal control officer, licensed veterinarian, or designated employee of the U.S. Public Health Service.

Sec. 12-1-6 Liability of Owners - Scienter - Dogs Used in Law Enforcement.

Every person owning or keeping a dog shall be liable in damages for injury committed by such dog, and it shall not be necessary in any action brought therefor to allege or prove that such dog was of a vicious or mischievous disposition or that the owner or keeper thereof knew that it was vicious or mischievous; but neither the Tribe nor any peace officer employed by the Tribe shall be liable in damages for injury committed by a dog when: (1) the dog has been trained to assist in law enforcement, and (2) the injury occurs while the dog is reasonably and carefully being used in the apprehension, arrest, or location of a suspected offender or in maintaining or controlling the public order.

Sec. 12-1-7 Dogs Acting Together - Actions - Parties - Judgment.

Where any injury has been committed by two or more dogs acting together and such dogs are owned or kept by different persons, all such persons may be joined as defendants in the same action to recover damages therefor, and the amount found by the court or jury as damages for such injury shall be apportioned among the several defendants found liable and judgment shall be entered jointly and severally against them for the amount so apportioned.

Sec. 12-1-8 Dangerous Animals.

(1) No person shall keep, own or possess any fierce, dangerous or vicious dog or other animal on the Reservation.

(2) An animal control officer may seize and impound any animal which he reasonably believe to be fierce, dangerous or vicious. Such animal shall not be released from

impoundment except upon the consent of the impounding officer, or upon order of a tribal judge upon making a determination, by hearing or otherwise, that no immediate danger to persons or property will result therefrom.

(3) Any dog or other animal, whether inoculated or not, reasonably believed to have bitten any person, shall be seized and impounded for such period of time as a public health officer or physician may direct. A public health officer or physician having reasonable grounds to believe that a dog or other animal has rabies or some other dangerous disease may order the immediate extermination of such animal and such shall be immediately carried out by the animal control officer or some other person in a humane manner.

(4) Any person shall have the right to immediately destroy any dog or other animal engaged in the process of injuring or harrassing livestock or other domestic or game animals or threatening or inflicting harm to any person, or inflicting serious harm to personal or tribal property.

Sec. 12-1-9 Animals Which Disturb Neighborhoods.

(1) No person shall own, keep or harbor any dog or other animal which by loud, continued or frequent howling, yelping, or barking or by noxious or offensive odors shall unreasonably annoy, disturb, or endanger the health or welfare of any person or neighborhood. An animal found to be causing a violation of this section may be seized and impounded.

(2) The owner of a female dog, cat or other non-livestock animal in heat or when in season, shall cause such animal to be penned or enclosed in such a manner as to preclude other animals from attacking such female animal or being attracted to it.

Sec. 12-1-10 Criminal Penalties for Violation of the Animal Control Code.

(1) Any person knowingly violating any of the following described provisions of this Code shall be guilty of a Class C offense and upon conviction thereof shall not be imprisoned but may be fined not less than \$5.00 nor more than \$50.00 for each conviction:

(a) failure to tag and/or inoculate an animal as required by Sec. 12-1-3.

(b) failure to quarantine or otherwise restrain an animal as required by Sec. 12-1-4.

(c) keeping, owning or possessing a fierce, dangerous, or vicious animal as prohibited by Sec. 12-1-8.

(d) violating the provisions of Sec. 12-1-9 regarding animals which disturb the neighborhood.

(2) Any person who cruelly injures, destroys, or poisons a dog, cat, or any other animal, except under the conditions authorized in this Title, shall be guilty of a Class C offense.

(3) It shall be a Class C offense for any person to abandon any live animal on the Reservation or to dispose of the carcass of any dead animal except in a place specifically set aside for such purposes by the Tribe and/or U.S. Public Health Service and/or any political subdivision of the State of South Dakota.

TITLE XIII

CHEYENNE RIVER SIOUX TRIBE HUNTING, FISHING AND OUTDOOR RECREATION CODE

Sec. 13-1-1 Intent, Scope and Purpose.

(1) It is the intent of this Hunting, Fishing and Outdoor Recreation Code to provide for an orderly system for the management and control of the wildlife and outdoor recreation resources of the Tribe. It is recognized that members of the Tribe have a preferred right and interest in the use of Tribal lands and facilities and the taking and use of wildlife found on the Reservation. The use of such lands and facilities and the taking of wildlife by non-members of the Tribe is a privilege to be conferred only upon compliance with the terms and conditions set by the Cheyenne River Sioux Tribe.

(2) All matters relating to the propagation, conservation, management, distribution, transportation, storage and taking of fish and game; the management, conservation and control of Reservation lands and waters for fish and game purposes, the regulations relating to fishing, hunting, trapping and sale, barter and exchange of fish and game on the Cheyenne River Sioux Indian Reservation are subject to the absolute jurisdiction of the Cheyenne River Sioux Tribe.

(3) All matters relating to the use of boats, snow-mobiles and other off-the-road or recreational vehicles on the Cheyenne River Sioux Indian Reservation, as well as other outdoor recreational activities, are subject to the absolute jurisdiction of the Cheyenne River Sioux Tribe.

(4) The purposes of this Code are:

(a) To provide an adequate and flexible system for the protection and conservation of all fish and game on the Reservation;

(b) To provide for planting and restocking necessary to provide and maintain an adequate supply of fish and game on the Reservation;

(c) To provide for the establishment of rules and regulations relating to the taking of wildlife on the Reservation;

(d) To provide for the general management and supervision of all wildlife and outdoor recreational activities; and

(e) To provide for the establishment of license requirements, prohibited acts, penalties and definitions.

Sec. 13-1-2 Definitions.

(1) "All terrain vehicle" means any motorized vehicle designed for or capable of travel over unimproved terrain.

(2) "Aquatic wildlife" means any species of fish, crustacean, aquatic insect, or amphibian.

(3) "Bag limit" means the maximum number of wildlife which may lawfully be taken by any one person in one day.

(4) "Big game animals" means all species of deer, elk, antelope and mountain lion.

(5) "Board" means the Cheyenne River Sioux Tribal Game, Fish and Parks Advisory Board.

(6) "Tribal Council" means the Cheyenne River Sioux Tribal Council.

(7) "Carcass" means the dead body of any animal or parts of it.

(8) "Certificate of Registration" means a document granting authority to engage in activities not covered by a license, permit or tag issued under this Code or any proclamation of the Tribal Council.

(9) "Closed season" means that period of the time during which the taking of wildlife is prohibited.

(10) "Code" means the Cheyenne River Sioux Tribal Hunting, Fishing and Outdoor Recreational Code.

(11) "Department" means the Cheyenne River Sioux Tribal Game, Fish and Parks Department.

(12) "Director" means the Director of the Cheyenne River Sioux Tribal Game, Fish and Parks Department.

(13) "Fishing" means to take aquatic wildlife by any means.

(14) "Game bird" includes all members of the following families:

- (a) Anatidae (Ducks and Geese)
- (b) Rallidae (Rails, Ballinules and Goats)
- (c) Ccolopacidae (Snipes, Landpipers)
- (d) Tetraonidae (Grouse, Ptarmigan)
- (e) Phasianidae (Quail, Partridge and Pheasant)
- (f) Meleagrididae (Turkeys)
- (g) Columbidae (Pigeons and Doves)

(15) "Game fish" means all species of trout, salmon, mountain herring, channel catfish, whitefish, croppie, perch, black bass, or pike.

(16) "Hunting" means to take any bird or animal by any means.

(17) "License" means the primary document granting authority to engage in activities covered by this Code.

(18) "Non-tribal member" means any person not enrolled as a member of the Cheyenne River Sioux Tribe.

(19) "Officer" means an officer of the Cheyenne River Sioux Tribal Game, Fish and Parks Department or other law enforcement officer of the Tribe.

(20) "Open season" means that period of time during which the taking of wildlife by legal means is permitted.

(21) "Permit" means a document, including stamps, requiring a license as a prerequisite to its issuance, which grants authority to engage in certain specified activities under this Code or any resolution of the Tribal Council.

(22) "Person" means an individual, individual association, partnership or corporation, or any agent of the foregoing.

(23) "Possession limit" means the maximum number of wildlife which may be possessed by any one person at any one time.

(24) "Recreational vehicle" means any snowmobile or all-terrain vehicle engaged in off-highway recreational use.

(25) "Reservation" means all lands and waters within the exterior boundaries of the Cheyenne River Sioux Indian Reservation as originally set forth in the Act of March 2, 1889, (25 Stat. 888).

(26) "Sell" means offer or possess for sale, barter, exchange or trade, or the act of selling, bartering, exchanging or trading.

(27) "Snowmobile" means any motorized vehicle designed for travel on snow and/or ice and steered and supported in whole or in part by skis, bolts, cleats, runners or low-pressure tires.

(28) "Tag" means a card, label or other identification device issued for attachment to the carcass of any wildlife.

(29) "Take" means to fish, angle, hunt, pursue, catch, capture, seize, trap, kill or possess any wildlife or any attempt to commit any of these acts.

(30) "Tribal member" or "Member of the Tribe" means any enrolled member of the Cheyenne River Sioux Tribe.

(31) "Tribe" means the Cheyenne River Sioux Tribe.

(32) "Wildlife" means any form of animal life generally living wild in a state of nature, including all wild mammals, birds, fish, reptiles and amphibians and their nests, eggs and spawn.

Sec. 13-1-3 Fish and Game Property of the Tribe.

(1) All wildlife now or hereafter within the Reservation, not held by private ownership legally acquired, and which for the purposes of this Code shall include all big game animals, game birds, waterfowl, game fish, amphibians and fur-bearing animals mentioned in this Code, are hereby declared to be the property of the Cheyenne River Sioux Tribe and no right, title, interest or property therein can be acquired, transferred or possession thereof had or maintained except as herein expressly provided.

(2) It shall be lawful for the Department or any person appointed by it in writing so to do under the direction of the Director, to take wildlife of any kind in any manner for the purpose of inspection, cultivation, propagation, distribution, scientific or other purposes deemed by the Director to be in the interests of the fish and game industry of the Tribe.

Sec. 13-1-4 Cheyenne River Sioux Tribal Game, Fish and Parks Department.

(1) There is hereby created a department to be known as the Cheyenne River Sioux Tribal Game, Fish and Parks Department which shall have the power and be charged with the duty to protect, propagate, manage and distribute big game animals, fur-bearing animals, game birds and game fish throughout the Cheyenne River Sioux Indian Reservation, and to direct and supervise the propagation of game fish, the rearing of game birds, the management of game and game lands, waterfowl and waterfowl refuges owned and operated by the Tribe, and the licensing of hunting, fishing, trapping and dealers in furs; to enforce the provisions of this Code; to carry out the policies and directions of the Tribal Council in all matters relating to fish and game activities; and the development, supervision and control of matters relating to outdoor recreational activities.

(2) The Department shall keep its principal offices at Eagle Butte, South Dakota, but may establish and maintain such branch or division offices within the Reservation as may be necessary for the prompt and efficient performance of its duties.

Sec. 13-1-5 Departmental Report To Tribal Council.

The Director shall make a detailed report of the Department's work and official transactions, and submit such report, together with such recommendations as are deemed necessary by him for the future benefit of the fish and game resources and outdoor recreational activities of the Tribe, to the Tribal Council annually.

Sec. 13-1-6 Cooperative and Reciprocal Agreements.

The Department is authorized, subject to the approval of the Tribal Council, to enter into reciprocal and cooperative agreements with the State of South Dakota and

any government agencies for the purpose of promoting and implementing wildlife management programs and outdoor recreational activities.

Sec. 13-1-7 Director of Fish and Wildlife Department.

(1) The Tribal Council shall appoint a Director of the Cheyenne River Sioux Tribal Game, Fish and Parks Department who shall have all rights of employment enjoyed by tribal employees generally. The Director shall be responsible to the Tribal Council or its authorized representative for the successful operation of the Department. He shall be a man with knowledge of and experience in wildlife resources, protection, conservation, restoration and management. The Director shall devote his entire working time to the service of the Cheyenne River Sioux Tribe in the discharge of his official duties. The Director shall receive a salary to be determined by the Tribal Council. The Director shall execute and deliver to the Tribal Council a surety company bond in such form and in such amount as the Tribal Council shall determine. Said bond shall be conditioned upon the faithful performance of his duties and the premium on the same shall be paid by the Tribe out of the Game, Fish and Parks fund.

(2) Specific conditions of the Directors' employment, including term, amount of salary and surety bond, leave and amount of liquidated damages, if any, and conditions for termination may, but need not, be included in a written contract with the Tribal Council or its authorized representative.

Sec. 13-1-8 Director Empowered to Effectuate Policies of Department.

The Director is empowered to investigate and determine the facts relative to the condition of fish, game and other wildlife on the Reservation, and other outdoor recreation activities. Upon the determination of those facts, the Director shall effectuate the tribal policy, as declared in the purposes and intent herein, and enforce all laws pertaining to wildlife, and work toward the preservation, protection, conservation, perpetuation and management thereof.

Sec. 13-1-9 Director's Powers and Duties.

The Director shall have executive authority and control

of the Department and its employees to the end that the policies of the Tribal Council shall be carried out in accordance with the ordinances, resolutions and proclamations of said Tribal Council. The Director shall have full control of and be responsible for all property of the Tribe acquired and held for the purposes contemplated by this Code. He shall, with the consent of the Tribal Council or its authorized representative, appoint such full time or temporary officers, wardens, and other assistants and employees from the membership of the Tribe or elsewhere as are necessary, and he may remove temporary employees at his discretion. In cases of emergency, the Director may exercise the powers of the Board until such time as the Board shall meet or the emergency ends.

Sec. 13-1-10 Department Employee Compensation.

The Department's officers and other employees shall receive such compensation, according to the standards established by the Tribal Council, as the Director shall determine; and in addition to the compensation herein specified, the Director, officers and other employees of the Department shall receive actual and necessary traveling expenses incurred in the performance of their duties.

Sec. 13-1-11 Budget.

The Director shall prepare and submit to the Tribal Council by the first day of May of each year, a budget containing the requirements for salaries and wages, office expenses, travel, equipment, repairs, and contingent expenses to be paid from the Game, Fish and Parks Fund in carrying out the provisions of this Code and regulations made pursuant thereto for the next following year.

Sec. 13-1-12 Game, Fish and Parks Advisory Board.

(1) The Game, Fish and Parks Advisory Board shall be composed of three members to be appointed by the Tribal Council. The selection and appointment of said members will be made upon consideration of the welfare and best interests of the Department, and no person shall be appointed to said Board unless he is well informed about and interested in the subject of wildlife, conservation and restoration and outdoor recreation. The Board shall elect one of its members as its chairman who shall preside at all its meetings.

(2) One member of the Board as initially appointed shall serve for a term of three years; a second member for a term of two years; and a third member for a term of one year. The term of each member shall commence, on the date of his appointment, and thereafter as terms expire the Tribal Council shall appoint replacements for three year terms.

(3) The Board shall receive remuneration as determined by the Tribal Council when on actual duty.

(4) The Board shall make a detailed report of its official proceedings, and submit such report, together with such recommendations as are deemed necessary by it for the future benefit of the fish and game and recreational resources of the Reservation, to the Tribal Council prior to the end of each calendar year.

Sec. 13-1-13 Advisory Board Meetings.

The Board shall hold at least four meetings each year, including an annual meeting to be held during the month of January. At the January meeting, the Board shall set dates for quarterly annual meetings. Additional meetings may be called by the chairman upon giving ten (10) days public notice. The Director shall act as secretary of the Advisory Board. Meetings of the Board shall be open to all interested persons and may be held at the Cheyenne River Sioux Tribal offices or elsewhere on the Reservation as determined by the Board. Two members of the Board shall constitute a quorum for the transaction of business unless otherwise required by ordinance or resolution of the Tribal Council.

Sec. 13-1-14 Formulation of Orders, Rules and Regulations.

(1) The Tribal Council, Department, Board and Director shall exercise their powers under this Code by orders, rules, regulations and resolutions made and adopted pursuant to this Code.

(2) For the purpose of providing an adequate and flexible system of protection, propagation, increase, control, management and conservation of wildlife on the Reservation and for the use and development for public recreation and food supply, the Board and Director are hereby authorized and directed to determine under what circumstances, when and what localities, by what means, in what amounts

and numbers the same may be taken or killed so as to maintain an adequate and proper supply thereof, and thereupon shall recommend to the Tribal Council the adoption of appropriate rules and regulations. The Tribal Council, upon the recommendation of the Board and the Director, shall by appropriate resolutions adopt a proclamation which will:

- (a) Fix seasons and shorten, extend or close seasons on any species of wildlife in any specific locality or localities, or in the entire Reservation, when it shall find that such action is necessary either to assure maintenance of an adequate supply thereof, to regulate taking, or to effectuate proper game management and control.
- (b) Close or open lakes, streams and refuges, or parts thereof, to angling, trapping or hunting, to regulate and prescribe the means by which wildlife may be taken and to regulate the transportation and storage of all wildlife or parts thereof within the boundaries of the Reservation and transportation off the Reservation.
- (c) Establish or change bag limits and possession limits.
- (d) Establish or change territorial limits for the taking of all species of wildlife.
- (e) Prescribe the manner and the means of taking or transporting any species of wildlife including, but not limited to, the prescribing of type or kinds of bait, lures, tackle, equipment, traps, firearms and weapons, tagging of game or fish or parts thereof, or any other means or device for taking such wildlife.
- (f) Designate areas for hunting with bow and arrow and the seasons therefore.
- (g) Establish hunting, trapping or fishing game, game birds, fish or fur-bearing animal refuges. When private property is to be included within a refuge, written consent of the owner must first be obtained. All boundary lines shall be posted at the usual place of ingress with signs bearing the title of the Department.

(h) Establish methods for checking hunters, fishermen or trappers into and out of designated areas, prescribe safety and fire control measures and other regulations as may be deemed necessary in the interest of range, game, fish or fur-bearing animal management, and the safety and welfare of hunters, trappers, fishermen, land-owners and the Tribe.

(i) Establish fees for special hunting seasons.

(j) Establish rules and regulations governing the operation of boats upon waters located within the exterior boundaries of the Cheyenne River Sioux Indian Reservation.

(k) Establish rules and regulations governing the operation of snowmobiles and other all-terrain, recreational vehicles on Tribal lands.

Sec. 13-1-15 Publication of Orders, Rules and Regulations.

(1) Rules, regulations and orders of the Tribal Council pertaining to the subject of this Code shall be published in the form of proclamations in the following manner: Those having general application throughout the Reservation shall be published at least once in some newspaper or newspapers published in and having general circulation throughout Dewey and Ziebach Counties; those of special character having local application only shall be published at least once in some newspaper, published in and having general circulation in the locality where in such rules, regulations and orders are applicable; but if no newspaper is so published and circulated, copies of such rules, regulations and orders shall be posted in at least three conspicuous places in the locality in which they are applicable.

(2) Such rules, regulations and orders may also be given such other publicity as the Tribal Council may deem desirable. All such publications or postings shall fix the date such rules, regulations and orders shall become effective, which shall not be less than two days after such publication or posting; provided, that in cases of emergency and in the interest of conservation, safety or fire prevention, fishing, hunting or trapping may be restricted in designated areas by posting signs at the usual places of ingress to the area affected by such

orders stating such restrictions.

(3) Any rules, regulations and orders of the Tribal Council reduced to writing, signed by the chairman of the Tribal Council, filed in the office of the Department and published or posted as provided herein, shall be deemed to have been duly adopted and promulgated and shall become effective as hereinabove provided. A copy of any such rules, regulations or orderd, certified by the Secretary of the Tribal Council to be a true copy and to have been adopted, filed and published or posed as aforesaid, shall be admissible in Court without further identification or authentication and shall be prima facie evidence in any court of this Reservation of the adoption, publication and promulgation of such rules, regulations and orders.

Sec. 13-1-16 Game, Fish and Parks Fund.

A Game, Fish and Parks Fund is hereby created, and all monies collected from the sale of licenses, and all the net monies collected from fines and forfeitures, and such other monies as may be received under any provision of this Code and resolutions made pursuant thereto shall be paid into said fund as provided in this Code. All monies paid into said fund shall be deposited in the Fund or account and shall be drawn upon for the payment of salaries and expenses and other expenditures authorized in this Code upon authorization by the Director with the consent of the Tribal Council.

Sec. 13-1-17 License Required.

(1) No non-Tribal member shall take any wildlife without first having procured a license therefor as herein provided and having at the same time such license in his possession; nor shall any such person lend, sell, give or assign his license nor any stamps belonging thereto.

(2) Before issuing any license for the taking of wildlife to a non-member of the Tribe, such person shall exhibit a currently effective State of South Dakota fishing and/or hunting license as is appropriate to the type of license applied for.

(3) Violation of this section is punishable as provided in Sec. 13-1-9 of this Code.

Sec. 13-1-18 Fees.

Fees shall be determined annually and shall be published in an annual proclamation.

Sec. 13-1-19 Penalties for Violation of Code; Procedures.

(1) Violation of any provision of this Code or any regulation or proclamation issued thereunder by the Tribal Council shall, unless otherwise designated, be a Class B offense and may, in addition to any other prescribed penalties, be punishable by revocation of fishing and hunting or other licenses, confiscation and forfeiture of equipment, and such other authorized action as the Tribal Council may deem appropriate. The provisions for penalties in this Code shall apply to all persons, both members and non-members of the Tribe alike, unless otherwise provided herein.

(2) At the time an arrest is made and/or citation issued for violation of this Code, the arresting officer shall confiscate any fishing equipment, rifles, guns or other fishing or hunting equipment or paraphernalia as reasonably appears to have been involved in the commission of the violation for which the arrest was made and shall give the person from whom such things are taken an itemized receipt for all such confiscated items. The Court, when hearing the case concerning the alleged violation, may in addition to any other penalty imposed upon a finding of guilt, order the forfeiture to the Department of all or part of the confiscated items.

(3) Not less than once each year, the Director or his designated representative shall conduct a public sale of all confiscated items not appropriated for the official use of the Department. Such sale shall be by auction held after not less than one week's notice to the general public, and the proceeds therefrom will go to the Game, Fish and Parks Fund.

(4) Non-Indian juveniles arrested for violation of this Code shall be taken before the Tribal Court rather than the Tribal Juvenile Court. The Court shall not impose imprisonment as a penalty upon a finding that the juvenile is guilty.

(5) In cases of violations of this Code or any regulation or proclamation issued hereunder in which the person alleged to have committed the violation resides within the territorial jurisdiction of the Tribe, the accused person shall not be taken into custody if he voluntarily signs a promise, printed on the citation issued for the offense, that he will appear before the Tribal Court within five (5) days, and if, in the judgment of the officer involved, no arrest is necessary to protect the peace and safety of the Reservation.

Sec. 13-1-20 Schedule of Fines.

The Board may adopt a schedule of fines to be imposed for violations of this Code, by the Tribal Court.

Sec. 13-1-21 Enforcement.

Police officers of the Cheyenne River Sioux Tribe are authorized to enforce the provisions of this Code and any regulations issued hereunder.

Sec. 13-1-22 Hunting and Fishing Restrictions.

Unless modified by ordinance, resolution or proclamation of the Tribal Council, the following acts by any person are declared to be unlawful and punishable as provided in Sec. 13-1-19:

(1) It shall be unlawful for any person to take any aquatic wildlife of any kind in any of the waters in the Reservation with any kind of spear, grab hook, or snag hook, or by the use of a jack light, or other artificial light, or by the use of a set line or night line, or any kind of net or seine, or more than two hooks on one line, or any kind of firearms, or any explosive substance or combination of explosives which have any tendency to kill or stupify fish, or by electricity or electrical devices.

(2) It shall be unlawful for any person to take aquatic wildlife from waters closed by proclamation or regulation of the Tribal Council or during times or seasons closed for such taking.

(3) It shall be unlawful for any person to have in his possession aquatic wildlife greater in number or smaller in size than specified in the annual proclamation or to

take any species for which taking has been closed or forbidden.

(4) It shall be unlawful to take aquatic wildlife with fish parts or game fish as bait.

(5) It shall be unlawful to sell, offer for sale, or have in possession with intent to sell wildlife or the carcass of any wildlife, excepting all species of rabbit or hare and the hide of a legally killed animal, or with the consent of the Department.

(6) It shall be unlawful for any person to shoot at or kill any ducks, geese, swans, snipe, sandpipers, grebs, plovers, willets, curlews, godwits, avocets, coots or mud hens, except by a proclamation to be issued annually by the Tribal Council in accordance with Federal Regulations. It shall be unlawful to have in possession more than two days legal limit of any game birds mentioned in this section. It shall be unlawful to use sneak boats, or sink boxes at any distance greater than one-half mile from the nearest shore line or island or marsh vegetation such as rushes, tule or grass, and not at all, except in such localities as are designated by the Board. It shall be unlawful to hunt, shoot at or kill ducks or geese with a rifle.

(7) It shall be unlawful for any person to take into a field or forest, or have in his possession while in the pursuit of game birds or game or fur-bearing animals, any device or mechanism designed to silence, muffle, or minimize the report of any firearm.

(8) It shall be unlawful for any person to shoot at, shoot, deface, damage, remove, or cause to be damaged, destroyed, or removed, any screens, dams, fishways, or fish traps owned, controlled, or operated by the Department or Tribe; or to shoot, shoot at, damage, destroy, or remove any road signs placed upon any of the roads or highways of this Reservation.

(9) It shall be unlawful for any person to hunt with a cross-bow or similar device.

(10) It shall be unlawful for any person to use the permit, tag or license of another person or to fail to exhibit for inspection the proper permit, tag or license and/or any fish and game in possession of an officer upon demand.

(11) It shall be unlawful for any person to hunt at night with a spot light.

(12) It shall be unlawful for any person to deposit litter, garbage, debris, or other waste on established camp grounds or waters except in places so designated for this purpose. Flammable material may be disposed of by burning in a safe manner, and all other wastes must be removed to sites or containers for waste disposal. On all other Reservation lands, such material must be buried or removed to sites or containers for waste disposal.

(13) It shall be unlawful for any person to leave an open fire unattended, to fail to extinguish all camp fires, or to fail to report a wild fire.

(14) It shall be unlawful for any person to molest, take or attempt to take non-aquatic wildlife with an aircraft or motor driven vehicle, except in the performance of official duties under the supervision of the Department.

(15) It shall be unlawful for any person to destroy, injure, or molest livestock, growing crops, personal property, or other improvements.

(16) It shall be unlawful for any person to handle or discharge a bow and arrow or firearm while intoxicated or in a careless or reckless manner or with wanton disregard for the safety of human life and property.

(17) It shall be unlawful for any person to dispose of waste water on the ground from campers, trailers and mobile homes except at authorized disposal areas.

(18) It shall be unlawful for any person to violate any other published rules, regulations, proclamations, or ordinances of general applicability adopted or approved by the Tribal Council for the management and/or protection of Tribal wildlife and outdoor recreation resources.

TITLE XIV
CHEYENNE RIVER SIOUX TRIBAL
PRETRIAL PROCEDURES CODE

Sec. 14-1-1 Intent.

The procedures established in this Pretrial Procedures Code are intended to establish a means whereby civil disputes can be settled in the traditional, customary Indian manner by discussion between the parties before a trusted, impartial tribal authority before resorting to formal trial procedures adopted from the non-Indian society and incorporated as a part of tribal law. The procedures require that formal court authority be invoked by the filing of a complaint, but anticipate that a great percentage of cases can be settled by traditional and customary means administered by the Tribal Court. The procedures set forth herein shall not be interpreted or applied to deny any person any right otherwise guaranteed by Tribal or Federal Law.

Sec. 14-1-2 Applicability.

The procedures established in this Code shall apply in all civil cases, if, at the appropriate times referred to herein, there are two or more judges of the Tribal Court holding office and available to participate as provided herein.

Sec. 14-1-3 Time.

A pretrial conference as provided herein shall be held in all civil cases once the case is at issue and the presiding judge shall cause to be served 14 days notice of the pretrial conference.

Sec. 14-1-4 Attendance.

All plaintiffs and all defendants shall be required to attend the pretrial conference. The parties may, upon obtaining the advance consent of the judge assigned to conduct the pretrial conference, bring with them such other persons, not including their attorney, advocate or lay counselor, as will tend to further the resolution of the issues of the case.

Sec. 14-1-5 Failure To Appear; Penalties.

Any person summoned to appear at a pretrial conference who shall fail to appear may be subject to contempt proceedings.

Sec. 14-1-6 Conduct of Pretrial Conference.

There shall be no record or transcript made of the proceedings at the pretrial conference nor shall any statement made therein by any person be used for any purposes should the case ultimately come to trial. If agreement is reached on some or all of the issues presented in the case, such agreement shall be recorded by the judge conducting the pretrial conference, or Court Clerk at his discretion, and may be embodied in a final or interlocutory order of judgment or in a pretrial order prepared to govern the conduct of any trial subsequently held.

Sec. 14-1-7 Attorneys and Public.

Pretrial conferences as provided herein shall not be open to the public nor shall professional attorneys, advocates or lay counselors be allowed to attend as representatives of the parties or otherwise (unless parties themselves).

Sec. 14-1-8 Judges' Function.

The judge conducting the pretrial conference shall listen to the positions of the parties and attempt to work out a settlement of all or some of the issues of the case. Such settlement shall not be inconsistent with the laws, ordinances, customs and traditions of the Tribe.

Sec. 14-1-9 Disposition of Cases.

In the event a settlement of the case is worked out, the judge conducting the pretrial conference shall cause a record to be made of such settlement by means of an order or judgment entered in the record of the case. In the event that some of the issues are not agreed to, the judge shall cause a pretrial order to be prepared stating what issues have been settled and what issues remain to be tried and such pretrial order shall supercede the pleadings for purposes of framing the issues for trial. The pretrial order may also contain agreements, stipulations, or orders by the Court as to the production of witnesses and evidence and

the conduct of discovery before trial. If trial appears necessary, the Court Clerk shall, at the time of the pretrial conference, obtain the names of all persons to be subpoenaed as witnesses and prepare and arrange for service of the necessary subpoenas.

Sec. 14-1-10 Voluntary Agreements.

No settlement of any issue in a civil case shall be made at the pretrial conference except with the voluntary agreement, taken by the judge conducting the pretrial conference, of all parties involved in the determination of the issue.

Sec. 14-1-11 Unsettled Cases.

All cases not settled either in whole or in part at the pretrial conference shall be scheduled for trial and a trial held before a judge other than the judge conducting the pretrial conference as if no such pretrial conference had been held, except that any pretrial order agreed to by the parties prior to the trial shall be controlling at the trial.

WHEREAS, the Cheyenne River Sioux Tribe of South Dakota is an unincorporated Tribe of Indians, having accepted the provisions of the Act of June 18, 1934 (48 Stat. 984), and

WHEREAS, the Tribe, in order to establish its tribal organization; to conserve its tribal property; to develop its common resources, and to promote the general welfare of its people, has ordained and established a Constitution and By-Laws, and

WHEREAS, the Tribal Council finds that the present tribal laws are not properly codified and that many are antiquated, and

WHEREAS, the Tribal Council finds that the due process requirements of the Indian Civil Rights Act of 1968, 25 USC §1302 et. seq., protecting the rights of the people should be implemented into Indian law, and

WHEREAS, the Tribal Council finds that the substantive laws embodied in the new Tribal Code are modern and more accurately reflect the expectations of the people than the old Code, now

THEREFORE BE IT RESOLVED, that Titles I, II, VII and XIV of the new Tribal Code which are attached hereto and hereby incorporated in this Resolution by reference, are hereby enacted into law.

BE IT FURTHER RESOLVED, that said Titles shall act as an express repeal of Title 4, in its entirety and Title 9, Chapter 3, Subchapter 1. in its entirety of the old Tribal Code; and that the same shall no longer be the law of the Reservation, as of the effective date on which Titles I, II, VII, and XIV of the new Code become effective.

BE IT FURTHER RESOLVED, that said Titles of the New Tribal Code shall become effective as of the date of this Resolution.

BE IT FURTHER RESOLVED, that Title III, IV, V, VI, VIII, IX, X, XI, XII and XIII of the New Tribal Code which are attached hereto and hereby incorporated in this Resolution by reference, are hereby enacted into law.

BE IT FURTHER RESOLVED, that said Titles shall act as an express repeal of Title 3, Chapter 3; Title 5; Title 7, Part I, Chapter 3 and Title 7, Part III, Chapter 9; Title 8; those portions of Title 9 not already repealed, Title 10; Title II-Traffic Regulations; and all Forms Sections of the Old Tribal Code, and that the same shall no longer be the law of the reservation as of the effective date of Titles III, IV, V, VI, VIII, IX, X, XI, XII and XIII of the New Tribal Code.

BE IT FURTHER RESOLVED, that said Titles of the New Tribal Code shall become effective as of July 1, 1978.

BE IT FURTHER RESOLVED, that any provisions of the Old Tribal Code not expressly repealed are hereby repealed by implication to the extent that such provisions are inconsistent with any Title of the New Tribal Code.

BE IT FURTHER RESOLVED, that such repeals by implication shall become effective as of the effective date of the New Code Title to which any inconsistent provision of the Old Tribal Code relates.

BE IT FURTHER RESOLVED, that any provision of the Old Tribal Code not expressly or impliedly repealed by the New Tribal Code shall remain in full force and effect.

CERTIFICATION

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members of whom 12, constituting a quorum, were present at a meeting, duly and regularly called, noticed, convened and held this 7th day of April, 1978, regular session; and that the foregoing resolution was duly adopted at such meeting by an affirmative vote of 10 for, 2 against, 0 not voting, and 3 absent.


Hazel Garreaux, Secretary
Cheyenne River Sioux Tribal Council

FEB 14 1994

Administration

CRST Resolution #47-78-CR (Law & Order Code)

Area Director, Aberdeen Area
Attn: Tribal Government, M.C. 304

Agency Superintendent, Cheyenne River Agency

Please find enclosed Resolution No. 47-78-CR, which revised the Cheyenne River Sioux Tribe's Law and Order Code. Search of records at the Agency and Area Office did not reveal where the resolution or revised code was ever submitted to this office. The code does contain sections that are subject to review by the Secretary of the Interior.

In light of the above, I hereby approve all sections of the Cheyenne River Sioux Tribal Law and Order (as revised by Resolution No. 47-78-CR), that are subject to review by the Secretary of the Interior in accordance with the CRST Constitution and By-Laws.

It is respectfully requested that the Field Solicitor be queried as to the validity of this office's approval.

"Sd" Russell J. McClure
Agency Superintendent

cc: CRST Secretary
CRST Attorney General