

TITLE FIVE

CRIMES

CHAPTER 1 – PARTIES TO CRIMES

- 5-1-1. Person capable of committing crimes
- 5-1-2. Aiding, abetting, advising, or assisting criminal conduct-charged and punished as principal
- 5-1-3. Accessories to crime

5-1-1. PERSONS CAPABLE OF

COMMITTING CRIMES. All persons are capable of committing crimes except the following:

- (1) Children under the age of 10 years;
- (2) Children of the age of 10 years or more but under the age of 14 years in the absence of proof that at the time of the committing of the act charged against them they knew its wrongfulness;
- (3) Persons who committed the act charged while under the involuntary subjection to the power of superiors;
- (4) Persons who, at the time of committing the act charged against them, were mentally ill.

5-1-2. AIDING, ABETTING, ADVISING, OR ASSISTING CRIMINAL CONDUCT-CHARGED AND PUNISHED AS

PRINCIPAL. Any person, who, with the intent to promote or facilitate the commission of a crime, aids, abets, advises, or assists another person in the planning or commission of a crime, **is chargeable and punishable as a principal to the crime committed.**

5-1-3. ACCESSORIES TO CRIME. A person is an accessory to a Class A crime, if, with the intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a Class A crime, he renders assistance to the other person. **There are no accessories to Class B crimes or Class C crimes.**

The term "render assistance" means to:

- (1) Harbor or conceal the other person;
- (2) Provide the other person with money, transportation, a weapon, a disguise, or any other thing to be used in avoiding discovery or apprehension, including information as to

the impending discovery or apprehension of the other person;

(3) Obstruct anyone by force, intimidation, or deception in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of the other person; or;

(4) Conceal, destroy, or alter any physical evidence that might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of the other person.

A violation of this section is a Class A crime.

CHAPTER 2 – CATEGORIES OF CRIMES

- 5-2-1. Class D crimes
- 5-2-2. Class C crimes - **Amendment**
- 5-2-3. Class B crimes - **Amendment**
- 5-2-4. Class A crimes - **Amendment**
- 5-2-5. Serving jail time in lieu of payment of fine

5-2-1. CLASS D CRIMES. A Class D Crime carries a maximum penalty of a fine not to exceed One Hundred Dollars (\$100.00) and court costs.

5-2-2. CLASS C CRIMES. A Class C Crime carries a maximum penalty of a fine not to exceed Five Hundred Dollars (\$500.00) and court costs.

5-2-3. CLASS B CRIMES. A Class B Crime carries a maximum penalty of a fine not to exceed Five Hundred Dollars (500.00) and court costs or a jail term not to exceed six (6) months or both fine, court costs, and jail term.

5-2-4. CLASS A CRIMES. A Class A crime carries a maximum penalty of a fine not to exceed Five Thousand Dollars (\$5000.00) and court costs or jail term not to exceed one (1) year or both the fine, court costs, and jail term.

5-2-5. SERVING JAIL TIME IN LIEU OF PAYMENT OF FINE. In the event that a fine is imposed by the court and the defendant is unable or unwilling to pay the fine, the court may order the same to be served out in jail at the rate of Twenty Dollars (\$20.00) per day. In addition, if the defendant is willing to work during the period of incarceration either while serving out a fine or serving out a jail sentence, the court may in its discretion

grant additional credit against the jail term or fine for the work performed by the defendant during the period of incarceration.

CHAPTER 3 – ATTEMPTS TO COMMIT CRIME

- 5-3-1. Attempt defined-punishment
- 5-3-2. Defenses not available for charge of attempt

5-3-1. ATTEMPT DEFINED-PUNISHMENT. Any person who attempts to commit a crime and in the attempt does any acts toward the commission of the crime, but fails or is prevented or is intercepted in the perpetration thereof, is punishable as follows:

(1) If the attempted crime is punishable as a Class A crime, the person guilty of such attempt is punishable by up to one-half of the maximum penalty, either fine or imprisonment, or both, as prescribed upon a conviction for a Class A crime; or

(2) If the attempted crime is punishable as a Class B crime, the person guilty of such attempt is punishable by up to one-half of the maximum penalty, either fine or imprisonment or both, as is prescribed for a Class B crime; or,

(3) If the attempted crime is punishable as a Class C crime, the person guilty of such attempt is punishable by up to one-half of the maximum penalty prescribed for commission of a Class C crime.

5-3-2. DEFENSES NOT AVAILABLE FOR CHARGE OF ATTEMPT. It is no defense to a charge of attempt that;

- (a) The offense attempted was actually committed; or
- (b) That in attempting unsuccessfully to commit a crime, the person accused actually accomplished the commission of another and different crime; or
- (c) The actor was legally or factually incapable of completing the crime if the crime could have been committed has the circumstances been as the actor believed them to be.

CHAPTER 4 – GENERAL OFFENSES

- 5-4-1. Conduct forced or under threat of force
- 5-4-2. Voluntary intoxication

5-4-1. CONDUCT FORCED OR UNDER THREAT OF FORCE. A person may not be

convicted of a crime where he engaged in conduct which would otherwise be criminal because of the use or threatened use of unlawful force upon him or upon another person, which force or threatened use thereof a reasonable person in his situation would have been unable to resist.

5-4-2. VOLUNTARY INTOXICATION. No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his having been in such condition.

CHAPTER 5 – ASSAULTS AND RELATED CRIMES

- 5-5-1. Simple assault
- 5-5-2. Aggravated assault
- 5-5-3. Reasonable force during arrest is not assault
- 5-5-4. Reasonable attempt to prevent crime against person property not assault
- 5-5-5. Reasonable force used by a parent, guardian, or teacher not assault

5-5-1. SIMPLE ASSAULT. A person is guilty of simple assault if he:

- (1) Attempts to cause or knowingly causes bodily injury to another; or
- (2) Negligently cause bodily injury to another with a dangerous weapon; or
- (3) Attempts by physical menace to put another in fear of imminent serious bodily harm, whether or not such harm actually occurs.

Simple assault is a Class B crime.

5-5-2. AGGRAVATED ASSAULT. A person is guilty of aggravated assault if he:

- (1) Attempts to cause serious bodily injury to another, or causes such injury knowingly, under circumstances manifesting extreme indifferences to the value of human life; or
- (2) Attempts to cause or knowingly cause, bodily injury to another with a dangerous weapon; or
- (3) Attempts to cause, or knowingly causes, any bodily injury to a law enforcement officer or judge or magistrate of the Rosebud Sioux Tribal Court; or other public officer of the Rosebud Sioux Tribe, Bureau of Indian Affairs, or Public Health Service while such public officer is engaged in the performance of his duties; or
- (4) Assaults another with the intent to commit serious bodily injury which results in serious bodily injury.

Aggravated Assault is a Class A crime.

5-5-3. REASONABLE FORCE DURING ARREST IS NOT ASSAULT. To use or attempt or offer to use reasonable force upon the person of another is not assault when committed by any law enforcement officer in the course of arresting one who has committed a crime and delivering him into custody.

5-5-4. REASONABLE ATTEMPT TO PREVENT CRIME AGAINST PERSONAL PROPERTY NOT ASSAULT. To use or attempts or offer to use force or violence toward the person of another is not assault when committed by the person about to be injured, or by another person in his aid or defense, in preventing or attempting to prevent a crime against his person or trespass or other unlawful interference with real or personal property in his lawful possession, provided that the force or violence used is not more than is reasonably necessary to prevent the crime.

5-5-5. REASONABLE FORCE USED BY A PARENT, GUARDIAN, OR TEACHER NOT ASSAULT. To use or attempt or offer to use force or violence toward the person of another is not assault when committed by a parent or the authorized agent of any parent or by any guardian, teacher, or other school official in the exercise of a lawful authority to restrain or correct his child or ward provided restraint or correction has been rendered necessary by the misconduct of such child or ward or by his refusal to obey the lawful command of such parent or authorized agent, guardian, teacher or other school official and the force or violence used is reasonable in manner and moderate in degree.

CHAPTER 6 – KIDNAPPING AND RELATED OFFENSES

- 5-6-1. Kidnapping
- 5-6-2. Possession of ransom or reward illegal
- 5-6-3. Custodial interference
- 5-6-4. Stalking - **Amendment**
- 5-6-5. Harasses - **Amendment**
- 5-6-6. A credible threat - **Amendment**
- 5-6-7. Stalking a child twelve or younger - **Amendment**
- 5-6-8. Order of protection - **Amendment**

5-6-1. KIDNAPPING. Any person who shall seize, confine, decoy, abduct, or carry away any person and hold or detain such person, except in case of an unmarried minor by parent thereof, for any of the following reasons is guilty of kidnapping:

- (1) To hold for ransom or reward, or as a shield or hostage; or
- (2) To facilitate commission or any crime or flight thereafter; or
- (3) To inflict bodily injury upon or to terrorize the victim or another person; or
- (4) To interfere with the performance of any Tribal, other governmental, or political function.

Kidnapping is a Class A crime.

5-6-2. POSSESSION OF RANSOM OR REWARD ILLEGAL. Any person who received, possesses, or disposes of any money or any portion of any property, which has at any time been delivered as a ransom or reward in connection with the violation of any statute against kidnapping, knowing the same to be money or property which has been at any time delivered as such ransom or reward, is guilty of a Class A crime.

5-6-3. CUSTODIAL INTERFERENCE. Any person, whether or not he is the parent of the child involved, is guilty of custodial interference if:

- (1) He, knowing that he has no legal right of custody or visitation with said child at the time and place, takes, entices, conceals, or detains a child under the age of 14 years from any person having lawful custody of said child;
- (2) Having actual physical custody of child under the age of 14 years pursuant to a judicial decree of a Court of competent jurisdiction which has granted to another person visitation or custody rights, and without legal cause, he detains or conceals said child with the intent to deprive said other person of lawful visitation or custody rights; or
- (3) Without legal cause he takes, entices, or detains an incompetent or other person who has been committed by legal authority to the custody of a third person or institution from said third person or institution, knowing he has no legal right to do so.

Custodial interference is a Class B crime.

5-6-4. STALKING. Any persons willfully, maliciously and repeatedly follows or harass another person or who makes a credible

threat to another person with the intent to place that person in reasonable fear of death or bodily injury is guilty of Stalking.
Stalking is a Class A crime.

5-6-5. HARASSES. For the purpose of this chapter, “harasses” means a knowing and willful pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purposes, directed at a specific person which seriously alarms, annoys, or harasses the person and which serves no legitimate purpose.

5-6-6. A CREDIBLE THREAT. For the purposes of this chapter “a credible threat” means a threat made with the intent and the apparent ability to carry out the threat. A credible threat need not be expressed verbally.

5-6-7. STALKING A CHILD TWELVE OR YOUNGER. Any person who willfully, maliciously and repeatedly follows or harasses a child, twelve years of age or younger or who makes a credible threat to a child twelve years of age or younger with the intent to place that child in reasonable fear of death or bodily injury or to reasonably fear for the child’s safety is guilty of Stalking.

5-6-8. ORDER OF PROTECTION. Upon the filing of a complaint under this Chapter, the victim shall immediately be issued an Order of Protection from the actor named in the complaint.

CHAPTER 7 – SEX OFFENSES

- 5-7-1. Rape
- 5-7-2. Sexual penetration defined
- 5-7-3. Sexual contact defined
- 5-7-4. Sexual contact with a minor
- 5-7-5. Indecent exposure
- 5-7-6. Incest
- 5-7-7. Knowledge of age of victim irrelevant
- 5-7-8. Registration of sex offenders - **Amendment**
- 5-7-9. Information required for registration - **Amendment**
- 5-7-10. Written notice of new address required - **Amendment**
- 5-7-11. Annual registration required - **Amendment**
- 5-7-12. Registration files availability - **Amendment**

- 5-7-13. Duty of court to inform convicted sex offenders of registration - **Amendment**

5-7-1. RAPE. Rape is an act of sexual penetration accomplished with any person other than the actor’s spouse under any or more of the following circumstances:

(1) Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim’s presence, accompanied by apparent power of execution; 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 privity of the accused; or

(4) Where the victim is less than 15 years of age.

Rape is a Class A crime.

5-7-2. SEXUAL PENETRATION

DEFINED. A sexual penetration means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal opening of another person’s body. Practitioners of the healing arts lawfully practicing within the scope of their practice are excepted from the provisions of this section.

5-7-3. SEXUAL CONTACT DEFINED. As used in this chapter, the term “sexual contact”, means any touching, not amounting to rape, of the breast of the female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of either party.

5-7-4. SEXUAL CONTACT WITH A MINOR.

Any person, aged 15 years or more, who knowingly engages in sexual contact with any minor person under the age 15 years, other than his spouse, is guilty of sexual contact with a minor. Sexual contact with a minor is a **Class B crime if the act is less than three years older than the minor. If the actor is three years or more older than the minor, then sexual contact with a minor is a Class A crime.**

5-7-5. INDECENT EXPOSURE. A person is guilty of indecent exposure if, for the

purpose of arousing or gratifying the sexual desires of any person, he exposes his genitals in such a fashion that they might be reasonably seen by the public.

Indecent exposure is a Class C offense.

5-7-6. INCEST. A person is guilty of incest if he knowingly cohabits or has sexual penetration or sexual contact with any person he knows to be an ancestor or descendent, brother, sister, aunt, uncle, nephew, niece, or first cousin, any of which are either whole or half blood, and without regard to legitimacy or adoption, or with a step-parent or step-child, while such relationship exists.

Incest is a Class A crime.

5-7-7. KNOWLEDGE OF AGE OF VICTIM IRRELEVANT. Whenever an element of any crime in this chapter depends upon the age of the victim being less than 15 years, it is no defense that the actor did not know the child's age or reasonably believed the child to be older than age 15.

5-7-8. REGISTRATION OF SEX OFFENDERS.

(1) Any person, other than a minor, who resides on this Reservation or who is temporarily domiciled on the Reservation for more than thirty (30) days and who been convicted, whether upon a verdict or pleas of guilty or a plea of nolo contendere, for commission of a sex crime, shall register, with the Tribal Law Enforcement Department.

(2) All persons required to register who were convicted prior to the date of enactment of this Ordinance, shall register with the Tribal Law Enforcement Department thirty (30) days after the enactment of this Ordinance.

(3) All persons required to register who are convicted and who are residing on the Reservation when convicted shall register with the Tribal Law Enforcement Department within ten (10) days of coming into the Reservation to reside or temporarily domicile for more than thirty (30) days.

(4) A violation of this section by an **Indian** shall constitute a **Class B misdemeanor punishable by up to a \$500.00 fine or up to a six (6) month jail sentence.**

(5) A violation of this section by a **Non-Indian** shall constitute a **civil infraction and subject to a fine of at least \$500.00 but not more than a \$1,000.00 fine.**

5-7-9. INFORMATION REQUIRED FOR REGISTRATION. Persons required to register pursuant to Sec. 5-7-8, above shall register by completing a registration form prescribed by the Law Enforcement Department and by submitting to photographing and fingerprinting. The registration form shall include the following information.

(1) The sex offender's name and all aliases used;

(2) A complete description of the sex offender, including attached photographs and fingerprints;

(3) The sex offender's residence address, length of time at that residence, and length of time expected to remain at that residence; and

(4) A complete account of all sex crimes for which the offender has been convicted.

5-7-10. WRITTEN NOTICE OF NEW ADDRESS REQUIRED.

(1) Any person required to register pursuant to Sec. 5-7-8, who moves to a different residence address shall inform the Law Enforcement Department of his or her new residence address within ten (10) calendar days of moving.

(2) A violation of this section by an **Indian** shall constitute a **Class B misdemeanor punishable by up to a \$500.00 fine or up to a six (6) month jail sentence.**

(3) A violation of this section by a **Non-Indian** shall constitute a **civil infraction and be subject to a fine of at least \$500.00 but not more than a \$1,000.00 fine.**

5-7-11. ANNUAL REGISTRATION REQUIRED.

(1) Any person required to register pursuant to Sec. 5-7-8 shall register annually with the Law Enforcement Department in order to verify the accuracy of the information given pursuant to Sec. 5-7-9.

(2) A violation of this section by an **Indian** shall constitute a **Class B misdemeanor punishable by up to a \$500.00 fine or up to a six (6) month jail sentence.**

(3) A violation of this section by a **Non-Indian** shall constitute a **Class B misdemeanor punishable by up to a \$500.00 fine or up to a six (6) month jail sentence.**

5-7-12. REGISTRATION FILES AVAILABILITY.

(1) The Law Enforcement Department shall maintain a file for each registered sex offender containing the information given pursuant to section 5-7-9.

(2) Law Enforcement Department may make the files available to any regional or national registry of sex offenders.

(3) Registration files shall be public records and shall be open to inspection by members of the public; provided that, all victim identifying information contained herein is confidential and nothing in this section authorizes the release of the name or any other identifying information regarding the victim of a sex crime to any person other than law enforcement agencies.

5-7-13. DUTY OF COURT TO INFORM CONVICTED SEX OFFENDERS OF REGISTRATION.

When sentencing any person found guilty of committing any of the sex crimes set forth in Sec. 5-7-8, inclusive, the Tribal Court shall require the person to read and sign any forms as may be required by the Law Enforcement Department and note in the Court’s record that the sex offender who failed to register has had the duty to register and the procedure for registration shall be explained to that offender by the Tribal Court.

CHAPTER 8 – CRIMES AGAINST THE FAMILY

- 5-8-1. Bigamy
- 5-8-2. Criminal non-support
- 5-8-3. Failure to sent children to school
- 5-8-4. Child neglect
- 5-8-5. Child abuse
- 5-8-6. Reports of child abuse required
- 5-8-7. Immunity from liability from reporting suspected child abuse
- 5-8-8. Privileged communications not available in defense of child abuse or neglect proceeding
- 5-8-9. Compelling another to marry

5-8-1. BIGAMY. Any person who, while being married to another presently living person, marries any third person, is guilty of bigamy. It is an affirmative defense to a charge of bigamy that:

(1) The actor’s spouse in the former marriage has been absent from the Rosebud Sioux Reservation for over five successive years without being known to be living by the actor; or

(2) The actor’s spouse in the former marriage has absented himself or herself from the actor by being outside the United States continuously for over five years; or

(3) The actor’s previous marriage has been pronounced void, annulled, or dissolved by a Court of competent jurisdiction.

Bigamy is a Class B crime.

5-8-2. CRIMINAL NON-SUPPORT. Any person who intentionally fails or refused without lawful excuse to furnish necessary good, clothing, shelter, medical attention, or other remedial care or means of support for his spouse or minor child under the age of 18, is guilty of criminal non-support. As used in this section, the word “child” includes any child born out of wedlock whose paternity has been admitted by the actor or has been otherwise acknowledged or established in a civil proceeding. It is no defense in a prosecution under this section that the spouse or minor child to be supported received necessary support from any source other than the Defendant. A parent who chooses medical treatment for his minor child by spiritual means alone in lieu of traditional medical attention is not for that reason alone in violation of this section. In any prosecution under this section against a parent who is not the lawfully appointed custodian of the minor child to be supported, it is an affirmative defense that at the time of trial, the Defendant is current with any and all child support payment obligations imposed by him by any Court of competent jurisdiction.

Criminal non-support is a Class B crime.

5-8-3. FAILURE TO SEND CHILDREN TO SCHOOL. Any person who being the parent, guardian or other person having a child under the age of 18 years in his care, custody or control, shall without good cause, neglect or refuse to send such child to school is guilty of failure to send children to school.

Failure to send children to school is a Class C crime.

5-8-4. CHILD NEGLECT. Any person who shall, without proper cause, fail to take proper care of or neglect any minor child dependant upon him, including any dependant child born out of wedlock, and he

being able to provide proper care, shall be deemed **guilty of a Class A offense.**

5-8-5. CHILD ABUSE.

(1) Any person who shall willfully abuse any minor child, shall be deemed guilty of a Class A offense.

(2) Any person who shall willfully abuse any unborn child by excessive consumption of alcohol or other controlled substance, said person being the mother of the unborn child, shall be deemed **guilty of a Class A offense.**

5-8-6. REPORTS OF CHILD ABUSE

REQUIRED. Any physician, dentist, chiropractor, doctor of osteopath, optometrist, psychologist, social worker, law enforcement officer, teacher, school employee or official, nurse, employee of Public Health Service, licensed or registered child welfare provider, or other person having reasonable cause to suspect that a child under the age of 18 years examined by such person either for care or treatment, or having observed said child in the course of ordinary and usual contact with said child, has been abused or neglected, or has been injured by other than accidental means by any person including a parent or other person responsible for such child's care, shall report or cause reports to be made orally and immediately by telephone or otherwise to the Tribal Prosecutor of the Rosebud Sioux Tribe or to the South Dakota or BIA Department of Social Services, or to the Tribal or BIA Police or the State's Attorney or County Sheriff of the county in which the child resides, if the child resides outside the Rosebud Sioux Reservation. Such person shall additionally file written reports under oath if requested to do so by the agency to which the suspected abuse has been reported. Failure to comply with this section constitutes the offense of failing to report suspected child abuse.

Failing to report suspected child abuse is a Class B crime.

5-8-7. IMMUNITY FOR LIABILITY FROM REPORTING SUSPECTED CHILD ABUSE.

Any person who in good faith makes a report of suspected child abuse pursuant to Section 5-8-6 above shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed, and shall have the immunity with respect to participation in any judicial proceeding resulting from such report.

5-8-8. PRIVILEGED COMMUNICATIONS NOT AVAILABLE IN DEFENSE OF CHILD ABUSE OR NEGLECT PROCEEDING.

The following evidentiary privileges are not available and may not be claimed in any judicial proceeding involving child abuse or neglect or resulting from the giving of any report concerning a child's injury or neglect or the cause thereof pursuant to section 5-8-7 above, namely;

- (1) Physician-patient privilege,
- (2) Communications between husbands and wives, or
- (3) Communications between teachers and students

5-8-9. COMPELLING ANOTHER TO MARRY.

Any person, who by force, menace, or duress compels another to marry, is **guilty of a Class B crime.**

CHAPTER 9 – PROSTITUTION AND RELATED OFFENSES

- 5-9-1. Prostitution
- 5-9-2. Pimping
- 5-9-3. Procuring, promoting, or patronizing prostitution
Definitions
- 5-9-4. Husband-wife privilege
- 5-9-5. Giving venereal disease to another
- 5-9-6. Giving venereal disease to another

5-9-1. PROSTITUTION.

- (1) Is an inmate or resident of a house of prostitution or otherwise engages in sexual penetration for a fee; or
- (2) Loiters in or within view of public place for the purpose of being hired to engage in sexual penetration;
- (3) Engages in or offers or agrees to engage in any sexual penetration with another person for a fee; is guilty of penetration.

Prostitution is a Class B crime.

5-9-2. PIMPING.

- (1) Solicits another person to patronize a prostitute; or
- (2) Procures or attempts to procure a prostitute for another; or
- (3) Transports a person into the Rosebud Reservation to promote that person's engaging in prostitution or procure or pays for said transportation; or
- (4) Owns, controls, manages, supervises, or otherwise keeps alone or in association with another, a house of prostitution or a

prostitution business, or leases or otherwise permits a place under his control to be used for prostitution or the promotion of prostitution by others; or

(5) Solicits, receives, or agrees to receive any benefit for doing or agreeing to do anything forbidden by this section; is guilty of pimping.

Pimping is a Class A crime.

5-9-3. PROCURING, PROMOTING, OR PATRONIZING PROSTITUTION. Any person who:

(1) Encourages, induces, procures or otherwise purposely causes another to become or remain a prostitute; or

(2) Promotes prostitution of a minor; or

(3) Promotes prostitution of his spouse, child, ward or any person for whose care, protection or support he is responsible; or

(4) Pays or offers to pay another person a fee for the purpose of engaging in sexual penetration; or

(5) Enters or remains in a house of prostitution for the purpose of engaging in sexual penetration;

is guilty of a Class A crime.

5-9-4. DEFINITIONS. The term sexual penetration shall have the same meaning as is used in section 5-7-2 of this Code. A house of prostitution is any place where sexual penetration or promotion of sexual penetration is regularly carried on by one or more persons for a fee, under the control, management, or supervision of another. On the issue of whether a place is house of prostitution, the following shall be admissible into evidence, namely its general reputation, the reputation of the persons who reside in or frequent the place, and the frequency, timing or duration of visits by non-residents.

5-9-5. HUSBAND-WIFE PRIVILEGE NOT AVAILABLE. The husband and wife evidentiary privilege may not claim by any person who is a witness during the prosecution under this chapter.

5-9-6. GIVING VENEREAL DISEASE TO ANOTHER. Any person who, knowing or having reason to believe he is infected with a venereal disease, shall infect another with said venereal disease is guilty of spreading venereal disease.

Spreading venereal disease to another is a Class C crime.

The Rosebud Sioux Tribal Court shall, upon conviction, have the power to order the

medical examination and treatment of the convicted person and may also order and compel the convicted person to disclose confidentially to the appropriate medical authorities the identities of other person who may have been exposed by the convicted person.

CHAPTER 10 - HOMICIDE

5-10-1. Murder by premeditated design

5-10-2. Felony murder

5-10-3. Manslaughter

5-10-4. Vehicle homicide

5-10-5. Justifiable homicide

5-10-6. Referral to justice department

5-10-1. MURDER BY PREMEDIATED DESIGN.

Any person who kills another human being without the authority of law and with a premeditated design to affect the death of the person killed or of any other human being, is guilty of murder.

Murder is premeditated design is a Class A crime.

5-10-2. FELONY MURDER. Any person who kills another human being while engaged in the perpetration of, or attempt to perpetrate, any arson, rape, robbery, burglary, kidnapping, or theft, is guilty of felony murder.

Felony murder is a Class A crime.

5-10-3. MANSLAUGHTER. Any person who, without a design to affect death:

(1) Kills another human being while engaged in the commission of any crime other than those mentioned in section 5-10-2 above; or

(2) Kills another human being in a heat of passion; or

(3) Kills another human being by means of a dangerous weapon; or

(4) Kills another human being by any act imminently dangerous to others and evincing a disregard of human life; or

(5) Kills another human being by the use of excessive force or more force than was reasonably necessary, either while resisting an attempt by the deceased to commit a crime, or after such attempt shall have failed; is guilty of manslaughter.

Manslaughter is a Class A crime.

5-10-4. VEHICLE HOMICIDE. Any person who, while under the influence of an

alcoholic beverage, intoxicating liquor, a controlled substance, or any other drug or substances, causes the death of another human being by the operation of a motor vehicle in a reckless, negligent, or careless manner, is guilty of vehicle homicide. For the 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, watercraft, aircraft, or snowmobile.

Vehicle homicide is a Class A crime.

5-10-6. JUSTIFIABLE HOMICIDE.

Homicide is justifiable when committed by law enforcement officers and by those persons acting by their command and in their aid and assistance, when necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any legal duty, or when necessarily committed in retaking felons who have escaped, or when necessarily committed in arresting felons fleeing from arrest.

5-10-7. REFERRAL TO JUSTICE

DEPARTMENT. No prosecution can be made under this Homicide Chapter unless the case has been submitted to the United States Attorney or other appropriate federal official and the case has been declined for prosecution.

CHAPTER 11 – CRIMES RELATED TO WEAPONS

- 5-11-1. Definitions
- 5-11-2. Controlled weapon
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5-11-1. DEFINITIONS. The word “firearm” means any person from which a projectile or projectiles may be discharged by

gunpowder. The word “gunpowder” includes any propellant that upon oxidation emits heat and light and is commonly used in firearm cartridges. The word “dangerous weapon” means any firearm, knife, or device, instrument, material, or substance, whether animate or inanimate, which is calculated or designed to inflict death or serious bodily harm, or by the manner in which it is used is likely to inflict death or serious bodily harm. The word “antique firearm” means any firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before the year 1898 or any replica of such firearm, if such replica has not been designed or redesigned for using rim fire or conventional center fire fixed ammunition, or uses rim fire or conventional center fire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade, or any other firearm which has been permanently altered so that it is incapable of being discharged.

5-11-2. CONTROLLED WEAPON. Any person who knowingly possesses a controlled weapon is guilty of a **Class A crime.**

As used in this Section, the word “controlled weapon” includes a firearm silencer, machine gun, short shotgun, or short rifle. The word “firearm silencer” means any instrument, attachment, weapon, or appliance for causing the firing of any gun, revolver, pistol, or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any such weapon. The word “machine gun” means any firearm that automatically discharges two or more cartridges by a single function of the firing device, or is capable of being modified to function as a machine gun. The word “short shotgun” means a shotgun having a barrel less than 18 inches long or an overall length of less than 26 inches. The word “short rifle” means a rifle having a barrel less than 16 inches long or an overall length of less than 26 inches.

5-11-3. EXCEPTIONS TO CONTROLLED WEAPONS STATUTE. The following persons may lawfully possess a controlled weapon within the Rosebud Reservation, namely:

- (1) A person who holds a valid federal license issued pursuant to law for such weapon or has registered such weapon with the proper federal authorities pursuant to law; or

(2) A person who is a law enforcement officer or member of the Armed Forces of the United States acting in the lawful discharge of his duties; or

(3) A person who possesses a controlling weapon briefly after having found it or taken it from an aggressor and is in the process of delivering it to law enforcement officers.

5-11-4. DISCHARGE OF A WEAPON IN A PUBLIC PLACE. Any person who willfully discharges any firearm, air gun, bow and arrow, or other weapon, in any public place, or in any place where there is any person likely to be endangered thereby, although no injury to any person results, is guilty of discharge of a weapon in a public place. **Discharge of a weapon in public place is a Class A crime.**

5-11-5. CARRYING A CONCEALED WEAPON. Any person, other than a law enforcement officer engaged in the discharge of his duties, who carries, loaded or unloaded, concealed about his person, any firearm or other dangerous weapon without an appropriate Tribal license, shall be guilty of the crime of carrying a concealed weapon. **Carrying a concealed weapon is a Class B crime.**

5-11-6. POSSESSION OF FIREARM BY FELON. Any person who has been convicted in the Courts of the United States or any state thereof of a felony or has been convicted in the Courts of the Rosebud Sioux Tribe of any Class A crime who has in his possession or under his control a firearm is **guilty of Class A crime.** This Section shall not apply to any person who has been discharged from prison, jail, probation, or parole for his most recent felony or Class A crime more than 5 years prior to the commission of said crime.

5-11-7. POSSESSION OF FIREARM OR DANGEROUS WEAPON WHILE INTOXICATED. Any person who, being under the influence of an alcoholic beverage or controlled substance or drug or medication or any other substance whatever, who has in his possession or under his custody or control any firearm or other dangerous weapon is guilty of possession of a firearm while intoxicated. **Possession of a firearm while intoxicated is a Class C crime if the firearm was unloaded.**

Possession of a firearm while intoxicated is a Class B crime if the firearm was loaded. Possession of any other dangerous weapon while intoxicated is a Class B crime.

5-11-8. POSSESSION OF FIREARM BY A MINOR. No person under the age of 16 years may possess or own a firearm without the consent of his parent or guardian and the appropriate license issued by the Rosebud Sioux Tribe. **A violation of this Section is a Class B crime.**

5-11-9. ANTIQUE FIREARMS EXEMPT. The restrictions of this chapter shall not apply to antique firearms.

5-11-10. FIREARMS PERMITS. The Treasurer of the Tribe with the approval of the director of the Department of Natural Resources of the Rosebud Sioux Tribe and the head of the Tribal police may issue permits to persons under the age of 16 but of the age of at least 12 years to carry firearms for hunting purposes only. The fee for the issuance of said permit shall be \$5. Said permit shall be effective through age 15. The Tribal Treasurer's office, with the approval of the Chief Judge of the Tribal Court and the head of the Tribal police force, may issue a license to a person to carry a pistol concealed on or about his person on the Reservation for a period of not more than 2 years from the date of issue, if it appears that the applicant has good reason to fear an injury to his person or his property, or has some other proper reason for carrying a pistol and that he is a suitable person to be so licensed and is not disqualified pursuant to section 5-11-6 of this code. The Treasurer's office will maintain a record of the written application for said license and the applicant will subscribe an oath before the Treasurer that the statements made on the application are true. The fee for issuing such license shall be \$25.00.

5-11-11. FORFEITURE OF WEAPONS OR FIREARMS. Any controlled weapon or firearm or other dangerous weapon used or possessed in violation of the provisions of this chapter shall be forfeited to the Tribe to be destroyed or sold or delivered to the Tribal police for their use or if the same was stolen, returned to the lawful owner upon the proof of ownership. The sale of any such weapons shall be the responsibility of the

head of the Tribal police who shall remit the proceeds of any such sale promptly to the Tribal Treasurer's office to be deposited in the general fund. The Tribal Treasurer in addition shall, upon receipt of the funds or upon any notification from Tribal law enforcement officer, cancel any weapons permit that was issued on said weapon.

CHAPTER 12 – DESTRUCTIVE DEVICES

- 5-12-1. Destructive device defined
5-12-2. Placing destructive device in vehicle
5-12-3. Possession of destructive device with intent to injure

5-12-1. DESTRUCTIVE DEVICE

DEFINED. For the purposes of this Section, a “destructive device” is any box, package, contrivance, bomb, or apparatus containing or arranged with an explosive, acid, or poisonous or inflammable, substance, chemical or compound, or other dangerous or harmful weapon or thing, constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or strike with any of its parts, unexpectedly when moved, handled, or opened, or after the passage of time or under a condition or in a manner calculated to endanger health, life, limb, or property.

5-12-2. PLACING DESTRUCTIVE

DEVICE IN VEHICLE. Any person who with intent to injure or to threaten to injure any person or property places or causes to be placed a destructive device on any motor vehicle, aircraft, watercraft, railroad, or common carrier or on or about the property of another or in any place where another person is likely to be injured thereby, without lawful authority **is guilty of a Class A crime.**

5-12.3 POSSESSION OF DESTRUCTIVE DEVICE WITH INTENT TO INJURE. Any person who has in his possession any destructive device with intent to injure, intimidate or terrify any person, or with the intent to injure or destroy any property without lawful authority **is guilty of a Class A crime.**

CHAPTER 13 – VANDALISM AND RELATED CRIMES

5-13-1. Vandalism

5-13-1. VANDALISM. Any person who, intentionally:

(1) Injures, defaces, damages, or destroys private property in which any other person has an interest without the consent of such other person; or

(2) Damages, defaces, injures, or destroys Tribal or other public property without the lawful consent of the appropriate governing body having jurisdiction thereof;

(3) Causes or threatens a substantial interruption or impairment of any public utility service, including but not limited to transportation, water supply, gas, power or other utility services; or

(4) Causes a substantial interruption or impairment in mass communication service or police, fire, or other public service communications or amateur or citizen's band radio communications being used for public service or emergency communications; or

(5) Deposits, throws, or propels any substance upon any highway, roadway, runway, or railroad track, or at any vehicle while such vehicle is either in motion or stationary;

is guilty of vandalism.

Vandalism is a Class C crime if the damage inflicted is \$100 or less.

Vandalism is a Class B crime if the damage inflicted is \$100 but \$500 or less.

Vandalism is a Class A crime if the damage is inflicted is more than \$500.

CHAPTER 14 – ESCAPE AND RELATED CRIMES

- 5-14-1. Escape
5-14-2. Aiding an escape
5-14-3. Providing contraband

5-14-1. ESCAPE. Any person who without lawful permission removes himself from custody, or fails to return to custody following temporary leave granted for a specific purpose or limited period is guilty of escape. The word “custody” 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 “custody” does not include supervision under probation or parole, or limitations incident to release on bail.

Escape is a Class B crime.

If any person convicted under this section is under sentence of imprisonment, his sentence on conviction for escape shall commence following the expiration of the term of the last sentence of his imprisonment.

5-14-2. AIDING AN ESCAPE. Any person who:

- (1) Aids another person to escape from custody; or
 - (2) Knowingly provides a person in custody with anything which may facilitate such person's escape; or
 - (3) While in custody, knowingly procures, makes, or possesses anything which may facilitate another's escape;
- is guilty of aiding and escape.

Aiding an escape is a Class B crime.

5-14-3. PROVIDING CONTRABAND. Any person who knowingly provides another person in custody with alcoholic beverages, drugs, controlled substances, weapons, firearms, any implement to aid an escape, or any other thing or substance which the actor knows the detainee cannot lawfully possess under the terms of the detainee's custody; is guilty of providing contraband.

Providing contraband is a Class B crime.

CHAPTER 15 – DOG CONTROL AND RELATED CRIMES

- 5-15-1. Cruelty to animals
- 5-15-2. Definitions - **Amendment**
- 5-15-3. Office designated - **Amendment**
- 5-15-4. Licensing of dogs and cats required - **Amendment**
- 5-15-5. Licensing requires vaccination certification - **Amendment**
- 5-15-6. Exceptions - **Amendment**
- 5-15-7. Display of tags - **Amendment**
- 5-15-8. At large prohibited - **Amendment**
- 5-15-9. Duplicate tags - **Amendment**
- 5-15-10. Failure to obtain or display license - **Amendment**
- 5-15-11. Licensing fees and fines - **Amendment**
- 5-15-12. Transferability - **Amendment**
- 5-15-13. License renewal - **Amendment**
- 5-15-14. Permits - **Amendment**
- 5-15-15. Change in ownership - **Amendment**
- 5-15-16. Permit fees - **Amendment**

- 5-15-17. Failure to obtain permit - **Amendment**
- 5-15-18. All facilities - **Amendment**
- 5-15-19. Rabies control - **Amendment**
- 5-15-20. Vaccinations - **Amendment**
- 5-15-21. Rabies tag - **Amendment**
- 5-15-22. Duplicate tags - **Amendment**
- 5-15-23. Designation of qualified persons - **Amendment**
- 5-15-24. Proof - **Amendment**
- 5-15-25. Duty to report - **Amendment**
- 5-15-26. Quarantine of animals - **Amendment**
- 5-15-27. Becoming sick in quarantine - **Amendment**
- 5-15-28. Removal of animals of quarantine - **Amendment**
- 5-15-29. Disposition of rabid animals - **Amendment**
- 5-15-30. Liability for damages - **Amendment**
- 5-15-31. Disposition of animal injuring livestock - **Amendment**
- 5-15-32. Nuisance - **Amendment**
- 5-15-33. Restraint of animals - **Amendment**
- 5-15-34. Animals in heat - **Amendment**
- 5-15-35. Vicious animals - **Amendment**
- 5-15-36. Harassment, organized fights, or deliberate injury/death of another animal - **Amendment**
- 5-15-37. Liability for dog bites - **Amendment**
- 5-15-38. Lawful presence on property where animal resides defined - **Amendment**
- 5-15-39. Provocations as defense - **Amendment**
- 5-15-40. Exotic, wildlife and endangered species - **Amendment**
- 5-15-41. Animal shelter - **Amendment**
- 5-15-42. Removal of animals from animal shelter - **Amendment**
- 5-15-43. Removal of bite animals from quarantine - **Amendment**
- 5-15-44. Disposition of impounded licensed animals - **Amendment**
- 5-15-45. Impoundment fee - **Amendment**
- 5-15-46. Unwanted animals - **Amendment**
- 5-15-47. Interference with the licensing authority or its authorized representatives - **Amendment**

5-15-48. **Penalty for violation -
Amendment**

5-15-1. CRUELTY TO ANIMALS. Any person who intentionally:

- (1) Tortures or seriously overworks an animal; or
 - (2) Fails to provide necessary food, care, or shelter for an animal in his custody or control; or
 - (3) Abandons an animal in his custody; or
 - (4) Transports or confines an animal in a cruel manner; or
 - (5) Kills, injures, or administers a poison to an animal without legal privilege to do so; or
 - (6) Causes one animal to fight with another; is guilty of cruelty of animals.
- It is a defense to prosecutor under this section that the conduct of the actor towards the animal involved was an accepted veterinary practice, or directly related to a bona fide experiment for scientific research, and that the animal being destroyed was destroyed in a manner no more cruel than necessary to accomplish the scientific research involved.

Cruelty to animals is a Class B crime.

5-15-2. DEFINITIONS. For use in this Ordinance the following terms are defined:

- (1) Abandonment of animals...any owner or who leaves an animal or animals off the premises without provision for care or control by owners or another person.
- (2) Animal...means dogs, cats and every other animal being other than human, not to include birds.
- (3) At heel...means under the voice control and within fifteen feet of the owner or person in custody of the animal.
- (4) At large...means any licensed or animal found off the premises of its owner and not under the control of a person, restrained within a vehicle, housed in a veterinary hospital, kennel or shelter or at the heel beside a person and obedient to that persons command.
- (5) Cat...means both male and female animals of the cat family (Felis Catus) whether neutered or not.
- (6) Dangerous animal...means and includes any animal which is not naturally tamed or gentle; or which is of a wild nature or disposition; or which is capable of killing or inflicting serious injury upon human beings and having known tendencies, individually or as a species. To do so; or which because of its size or other characteristics, would constitute a danger to

life or property if it is not kept or maintained in a safe manner or in secure quarters.

(7) Domestic animal...shall mean any of various animals, such as the horse, cow, or sheep, domesticated by man so as to live and breed in a tame condition.

(8) Dart...means the process whereby a drug of a sedative nature is delivered to and injected into an animal by means of a projectile shot from a rifle or gun for the purpose of subduing or rendering an animal unconscious for capture.

(9) Dog...means both male and female animals of the canine species whether neutered or not.

(10) Harboring...the occupant of any premises on which an animal is kept or to which customarily returns daily food and care, is presumed to be harboring or keeping the animal within the meaning of this ordinance.

(11) Neutered...refers to a surgical procedure that has been performed on a dog or a cat that renders it incapable of siring or bearing offspring.

(12) Nuisance animal...any dog that is repeatedly at large and:

- (a) Molests passerby's or passing vehicles
- (b) Causes a threat to vehicle traffic
- (c) Attacks other animals or harassment and threat of livestock
- (d) Damages private or public property
- (e) Trespasses on school grounds endangering children
- (f) Is vicious, dangerous or ferocious
- (g) Sick with or liable to communicate rabies or other contagious or infectious disease
- (h) Is female and in heat
- (i) Habitually, constantly, or frequently disturbs the sleep, peace and quiet of any neighborhood or person.

(13) Owner...means any person or persons, firm, association, or corporation, or parent of a child owning, keeping, sheltering or harboring an animal.

(14) Pet...shall mean any animal kept for pleasure rather than utility.

(15) Rabies vaccination...means the injection intramuscularly of antirabic vaccine received from a licensed veterinarian or at a public clinic which may be established for this purpose.

(16) Stray...shall mean any dog, cat or animal not having a known owner.

(17) Vicious Dog...any dog that constitutes a physical threat to human beings or other animals.

(18) Wild or Exotic Animal...shall mean any non-human primate, raccoon, skunk, wolf, squirrel, fox, bear, leopard, panther,

tiger, lion, lynx, or any other warm blooded animal of the bovine, suidae, marsupials, constrictive or poisonous snakes, amphibians, or stone fish which can normally be found in the wild sate or any member of the crocodilian including, but not limited to, alligators, crocodiles, caimans' and gavial. Non-poisonous snakes, rabbits, guinea pigs, laboratory rats, mice, gerbils, and hamsters, which have never lived in the wild state, shall be excluded from this definition.

(19) RST...shall refer to the Rosebud Sioux Tribe.

5-15-3. OFFICE DESIGNATED.

(1) The Animal Control Program, under the RST Health Department, is designated as the official agent for the Rosebud Sioux Tribe for the purpose of enforcement of this Ordinance. The Health Department (Licensing Authority) will be responsible for issuing animal licenses, and collecting fees therefore pursuant to the provisions of this Ordinance.

(2) The Animal Control Officer shall have the authority to enter into agreements with third parties for capture, transport, impoundment and disposition of any animal found within the boundaries of the Rosebud Reservation, and for other purposes relating to the enforcement of this ordinance.

(3) The Animal Control Officer will be cross deputized through Tribal Law Enforcement and Game Fish and Parks (Natural Resources)

5-15-4. LICENSING OF DOGS AND CATS

REQUIRED. Any person owning, keeping, harboring, maintaining, or having custody of any animal within the boundaries of the Rosebud Reservation must obtain from the Tribal Health Department a license as herein provided. All licenses shall expire on February 28, of each year and the full amount for required license shall be paid for any fraction of the licensing year. Upon collection of the license fee by the Licensing Authority, a dated receipt shall be issued indicating the name and address of the owner, description of the animal, the appropriate fee amount, license number, year and location of issuing office. The fee shall be \$5.00 per year or fraction thereof.

5-15-5. LICENSING REQUIRES VACCINATION CERTIFICATION.

(1) The Tribal Health Department shall issue a Certification of Registration for each dog or cat within the Rosebud Reservation provided that the owner exhibit proof that the dog or cat described in the registration

application is up to date on its rabies vaccination and provided further that the owner shall pay to the Health Department a registration fee of five (\$5) dollars for each dog and cat.

(2) Within thirty days after March 1, or within thirty days after the dog or cat reaches six (6) months of age, or is under six (6) months of age and is no longer with its mother, every owner of such dog or cat shall procure a tribal animal license, under the provisions stated above.

5-15-6. EXCEPTION. This code applies reservation wide with no exceptions.

5-15-7. DISPLAY OF TAGS. The tag received at the time the animal is vaccinated against rabies along with the license tag shall be attached to a collar, harness or other device and shall be worn by the licensed animal at all times, and shall not be removed from any animal by an unauthorized person. The original license receipt and rabies vaccination certificate shall be retained by the owner or harbinger for inspection by any person charged with the enforcement of this Ordinance.

5-15-8. AT LARGE PROHIBITED. The owner of an animal shall at all times have the animal confined or restrained, to prevent it from running at large.

5-15-9. DUPLICATE TAGS. In the event of loss or destruction of the original license tag the owner of the animal shall obtain a duplicate tag by paying a fee of three (\$3) dollars from the licensing authority. The Licensing Authority shall enter in the license record the new number assigned.

5-15-10. FAILURE TO OBTAIN OR DISPLAY LICENSE. Any person who fails to obtain or to display the license tags shall be required to pay a fine as set by the Licensing Authority.

5-15-11. LICENSING FEES AND FINES. Fees for licenses, duplicate tags and licensing times shall be issued by the Licensing Authority, and Public Notice of fees and fines shall be published in the local paper and posted and by public display on posters, in frequently visited places. The fees and fines described within, shall be in effect for year at which time they may be changed with approval of the Tribal Council. All changes in fees must give the public 30 days notice before taking affect.

5-15-12. TRANSFERABILITY. Animal licenses are not transferable. Any person attaching a license or rabies tag to any other than the animal for which such tag was originally issued shall be required to pay a fine set by the Licensing Authority.

5-15-13. LICENSE RENEWAL. Licenses must be renewed each year, regardless of date of issue. All licenses shall expire on February 28, and will be valid until February 28, of the following year. Registration fees shall be paid at the time of license renewal.

5-15-14. PERMITS. No person, partnership, or corporation shall operate a commercial animal establishment or animal shelter within the Rosebud Reservation boundaries or without first obtaining a permit in compliance with this section and with all other licensing laws of the Rosebud Reservation. All permits shall expire on February 28, of each year and all fees shall be pro-rated for any fraction of the licensing year. Upon collection of payment for the permit by the Licensing Authority a dated receipt shall be issued indicating the name and address of the owner of the commercial animal establishment and the appropriate fee.

5-15-15. CHANGE IN OWNERSHIP. If there is a change in the ownership of any current commercial establishment, the new owner may have the current license transferred to their name upon payment of a transfer fee, as established by the Licensing Authority.

5-15-16. PERMIT FEES. Permits for animals in a commercial establishment may be licensed in group depending on size of group, providing each animal within the group can prove current rabies vaccination certifications, group license shall be issued upon payment of the applicable fee to be set by the Licensing Authority.

5-15-17. FAILURE TO OBTAIN PERMIT. Any person who fails to obtain a business license, animal permit before opening any facility covered by this section shall be subject to, and pay a fine as set by the Licensing Authority.

5-15-18. ALL FACILITIES. All facilities covered by this section shall be operated in a safe and sanitary manner. Humane treatment of animals, as covered under this

Ordinance is required. Penalty for violation of this subsection shall be a fine set by the Licensing Authority and/or revocation of all permits, and possible impoundment of animals within the facility, dependant on the severity of the in-humane treatment found during inspections or reports of cruelty.

5-15-19. RABIES CONTROL. The Rosebud Reservation is a rural and sometimes frontier area with pets frequently coming in contact with wild animals and interacting with other dogs, therefore this section is specific to the control of the communicable disease rabies.

5-15-20. VACCINATIONS.

(1) Every person owning or harboring a dog and cat three (3) months of age or older for five (5) or more days shall have such animals vaccinated against rabies with an approved vaccine by a licensed veterinarian or by persons authorized by the Licensing Authority. This vaccine shall be listed as an approved vaccine in the most recent Compendium of Animal Rabies Vaccine prepared by the National Association of State Public Health Veterinarians, Inc. Dogs whose vaccination expires during the licensing year will be vaccinated prior to license renewal. Failure to have animals vaccinated will result in a fine as set by the Licensing Authority.

(2) A current certificate of immunization or rabies signed by a licensed veterinarian or other designated agent shall hereafter be required for all dogs and cats within the limits of the Rosebud Reservation, and a copy of the certificate shall be presented by the owner or his agent to the Rosebud Sioux Tribe's Licensing Authority, for filing. The certificate must contain the following information.

(a) The name, address and telephone number of the owner;

(b) The type of vaccine used, manufacturer, and serial or lot number;

(c) The date the vaccination expires in the dog or cat or harbored of the inoculated animal;

(d) The date of inoculation;

(e) The year and serial number of the rabies tag; and

(f) The breed, age, color, and sex of the inoculated animal.

5-15-21. RABIES TAG. Concurrent with the issuance and delivery of the certificate of vaccination referred to, the owner of the animal shall attach to the collar or harness of the vaccinated animal a metal tag serially

numbered and bearing the year of issuance, as comes with the vaccination.

5-15-22. DUPLICATE TAGS. In the event of loss or destruction of original tag, the owner of the animal shall obtain a duplicate tag from the Licensing Authority for a fee set by the Licensing Authority.

5-15-23. DESIGNATION OF QUALIFIED PERSONS. All veterinarians who are duly registered and licensed to practice veterinary medicine in the United States are hereby designated as authorized to vaccinate animals against rabies and to execute certificates of vaccinations as provided by law. Also health advisors, who have received specialized training in vaccinating animals against rabies, are authorized to vaccinate animals.

5-15-24. PROOF. It shall be unlawful for any person who owns or harbors, any dog or cat or other animal to fail or refuse to exhibit a copy of the certificate of vaccination upon demand to any person charged with the enforcement of this Ordinance.

5-15-25. DUTY TO REPORT. When any person is bitten by an animal, it shall be the duty of such person or his parent or guardian and the owner or keeper of the animal to immediately notify the Licensing Authority, IHS Office of Environmental Health (OEH), or the Rosebud Sioux Tribe Law Enforcement of the incident.

5-15-26. QUARANTINE OF ANIMALS. Any animal which has bitten a person shall be observed for a period of 10 days from the date of the bite. The procedure and place of observation shall be designated by the representative of the Licensing Authority. If the animal is not confined on the owner's premises, confinement shall be in an authorized Animal Shelter, or holding facility, or at any veterinary hospital of the owner's choice and at owner's expense. Stray animals whose owners cannot be located shall be confined in an authorized animal shelter or holding facility. The owners of any animal that has been reported as having inflicted a bite on any person shall on demand produce said animal for quarantine as prescribed in the Section. Refusal to produce said animal constitutes a violation of this Section and each day of such refusal shall constitute a separate and individual violation.

5-15-27. BECOMING SICK IN QUARANTINE. Any dog or cat being held in quarantine, reviewed daily to be a representative of the Licensing Authority develops signs and symptoms which may be indicative of rabies, shall be humanely killed by the representative by the Licensing Authority and its head submitted by HIS OEH to a laboratory qualified to conduct rabies analysis.

5-15-28. REMOVAL OF ANIMALS OF QUARANTINE. No person shall remove from any place of isolation or quarantine any animal which has been isolated or quarantined, without the written consent of the Licensing Authority.

5-15-29. DISPOSITION OF RABID ANIMALS. Any dog or cat bitten by an animal known or proven to be rabid shall be humanely killed immediately by a person authorized by the Licensing Authority, provided that any dog or cat which has been vaccinated at least three (3) weeks before being bitten shall be re-vaccinated against rabies and confined for ninety days. At the end of the confinement period, the dog or cat shall be released if declared free of rabies by a licensed veterinarian. If as determined by the veterinarian, the dog or cat develops rabies during the confinement period, the owner or keeper shall notify the Licensing Authority and it shall be humanely killed and properly disposed of.

5-15-30. LIABILITY FOR DAMAGE. If a dog shall kill or injure any livestock, the owner or keeper of such animal shall be liable for all damages that may be sustained thereby, to be recovered by the party so injured; provided that the livestock is within an area of authorized livestock use.

5-15-31. DISPOSITION OF ANIMAL INJURING LIVESTOCK. No person shall keep any dog after it is known that dog is liable to kill or injure livestock and it shall be the duty of the owner to kill or have killed the dog upon order of the Licensing Authority after finding that the dog has killed or injured livestock; provided however, that it shall be the right of any owner of livestock so killed or injured by the actions of any dog or any person witnessing such actions to kill such animal while it is upon property controlled by the owner of the livestock. If a dog is observed attacking livestock and wildlife (game animals, individuals authorized by the

Licensing Authority can take appropriate actions to prevent these actions.

5-15-32. NUISANCE. No animal owner or keeper to harbor or maintain or permit on any lot, parcel of land or premise under his/her control, any dog or other animal which by any sound or cry shall disturb the peace and comfort of the inhabitants, of the neighborhood or interfere with any person in the reasonable and comfortable enjoyment of life or property.

5-15-33. RESTRAINT OF ANIMALS. It shall be unlawful for any person owning or having charge of any animal except a domestic house cat to permit such animal to run at large, unless such animal is restrained by a leash not to exceed six (6) feet in length and is in charge of a person competent to restrain such animal. Such animal may be at large on the owner's property, if contained within a secure fence that will keep the animal confined to the premises.

5-15-34. ANIMAL IN HEAT. Every female dog or cat in heat shall be confined in a building or secure enclosure in such a manner that such animal cannot come in contact with no other dog or cat except for planned breeding. Any person permitting a female dog in heat to run at large shall be cited into Tribal Court.

5-15-35. VICIOUS ANIMALS. No person shall keep any animal known to be vicious (by breed or nature) and liable to attack and injure a human being or other animal unless such animal(s) is securely kept so as to prevent injury to any person, pet or livestock. The owner of such an animal must post signs on his property warning others to beware of the animal. Signs must be in clear view prior to entering the property.

5-15-36. HARASSMENT, ORGANIZED FIGHTS, OR DELIBERATE INJURY/DEATH OF ANOTHER ANIMAL. No person shall harass or intimidate another person or their pet, through ownership of a vicious dog. No owner of a vicious dog shall allow their animal to deliberately injure or kill another animal. There shall be no organized fighting of Dogs allowed within the boundaries of the Rosebud Reservation.

5-15-37. LIABILITY FOR DOG BITES. The owner of any dog which bites a person when the person is in or on a public place, or

on the property where the owner of the animal resides, shall be liable for damages suffered by the person bitten, (including medical treatment costs) regardless of the former lack of viciousness of the dog or the owner's knowledge of its viciousness, and including a fine of \$100.00.

5-15-38. LAWFUL PRESENCE ON PROPERTY WHERE ANIMAL RESIDES DEFINED. Any person is lawfully in or on said property within the meaning of this section when as an invitee, or guest, or when in the performance of a duty or service imposed on that person, by law, regulation, or consent of a family member of that residence.

5-15-39. PROVOCATION AS DEFENSE. Proof of provocation, or aggravation, (by owner visualization with other witnesses, written documentation over time, or by police notification), of the attack by the person injured shall be a defense action for liability and/or damages.

5-15-40. EXOTIC, WILDLIFE AND ENDANGERED SPECIES. It is a nuisance and shall be unlawful for any person to keep, harbor, or maintain or to sell native fur bearers, bears, exotic cats, venomous and constrictive snakes, any endangered species, or dangerous reptiles, amphibians, or exotic rodents, or wildlife, as pets.

5-15-41. ANIMAL SHELTER. An animal shelter shall be established for the purpose and caring for any animal impounded under the provisions of this Ordinance, and such shelter shall be constructed to facilitate cleaning and sanitizing and shall provide adequate water and lighting. The animal shelter shall be operated in a safe and sanitary manner and shall meet Indian Health Service Standards, as well as the Standards of the Rosebud Sioux Tribe.

5-15-42. REMOVAL OF ANIMALS FROM ANIMAL SHELTER. It shall be unlawful for any person to remove any impounded animal from the Animal Shelter without consent from the Licensing Authority.

5-15-43. REMOVAL OF BITE ANIMALS FROM QUARANTINE. Animals impounded because of bites shall not be removed from the pound until after ten (10) days observation period and a release from the

Licensing Authority is secured, and payment of food care fee is paid.

5-15-44. DISPOSITION OF IMPOUNDED LICENSED ANIMALS. As soon as practicable after impoundment, the Licensed Authority shall notify the owner, provided that a name tag including the owners name, address, and telephone number is attached to the dog or cat's collar or harness. Any impounded animal which is licensed may be redeemed by the owner upon payment of an impoundment fee, care and feeding fee, veterinary fees, and such other costs as set by the Licensing Authority. If such animal, is not redeemed within eight (8) days, it shall be deemed abandoned and the Licensing Authority may humanely destroy said animal. As soon as practicable after impoundment, the Licensing Authority shall notify the owner, provided that a name tag including the owner's name, address, and telephone number is attached to the dog or cat's collar or harness. Any impounded animal which is not licensed may be redeemed, upon payment of the payment of the license fee, impoundment fee, care and feeding fee, veterinary charges, and presentation of proof of rabies vaccination, and such other costs as set by the Licensing Authority. If such animal is not wearing its tags as required by this code is not redeemed within three (3) days, it shall be deemed abandoned and the Licensing Authority may humanely destroy the animal as such.

5-15-45. IMPOUNDMENT FEE. An owner reclaiming an impounded cat shall pay a fee to be set by the Licensing Authority.

5-15-46. UNWANTED ANIMALS. Unwanted and for wild or untamed dogs and cats can be immediately humanely destroyed or put up for adoption for fees to be set by the Licensing Authority.

5-15-47. INTERFERENCE WITH THE LICENSING AUTHORITY OR ITS AUTHORIZED REPRESENTATIVES. No one shall interfere with, molest, harass, hinder, or prevent the Licensing Authority or its authorized representatives in the discharge of their duties as herein prescribed, or to violate any of the provisions of this Ordinance.

5-15-48. PENALTY FOR VIOLATION. Unless otherwise provided in this Ordinance, any person who violates any of the provisions of this Ordinance shall be fined no less than

fifty dollars (\$50.00) and not more than one thousand dollars (\$1,000.00).

Recommended fees/fines for this ordinance:

Registration Fee	\$5.00
Rabies Vaccination (given by Animal Control Officer)	\$20.00
Duplicate Registration Tag	\$3.00
Failure to Display Tag	\$5.00
Transferability of Tags	\$50.00
Permits (group rates)	
6-10 animals	\$50.00
10-25 animals	\$100.00
over 25 animals	\$200.00
Ownership Transfer Fee	\$75.00
Failure to Obtain Permit	\$100.00
Failure to Operate Safe and Sanitary Facility	
Per individual animal	\$100.00
Plus over facility	\$500.00
Failure to Obtain Rabies Vaccination	\$50.00
Duplicate Rabies Tag	\$3.00
Refusal to Produce Animal for Quarantine	\$5.00
per day for up to 10 days	\$50.00
Removal of Animal from Quarantine	\$50.00
Nuisance Animal	
First Offense	\$50.00
Second Offense	\$100.00
Third Offense	Disposal of Animal
Animal at Large	
First Offense	\$50.00
Second Offense	\$100.00
Third Offense	\$150.00
Fourth Offense	Disposal of Animal
Animal in Heat	\$30.00
Harassment, Intimidation or Organized Fights	
First Offense for Harassment	
Intimidation	\$200.00
Second Offense	\$300.00
Fighting of Vicious Animals	
First Offense	\$500.00
Per animal	
Second Offense	\$1,000.00 + Disposal of Animal
Keeping of Exotic or Wildlife	\$1,000.00
Removal of Bite Animal	\$100.00
Impoundment Fee	\$10.00
Interference with Licensing Authority Representative	\$500.00

CHAPTER 16 – PERJURY AND RELATED CRIMES

- 5-16-1. Perjury
- 5-16-2. False alarms
- 5-16-3. Tampering with witnesses
- 5-16-4. Retaliation against witness
- 5-16-5. Solicitation
- 5-16-6. Tampering with evidence
- 5-16-7. Tampering with public records
- 5-16-8. Impersonating an officer or public servant
- 5-16-9. Definitions
- 5-16-10. Compounding a crime
- 5-16-11. Threatening or intimidating a judicial officer
- 5-16-12. Attempting to influence
- 5-16-13. Agreement to give a verdict
- 5-16-14. Resisting arrest
- 5-16-15. Failure to Appear - **Amendment**

5-16-1. PERJURY. Any person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which such an oath may by law be administered, intentionally and contrary to such oath, states any material matter he knows to be false, is guilty of perjury.

A false statement is material, regardless of the admissibility of the statements 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 false statement to be immaterial.

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.

No person shall be convicted of an offense under this section if he retracted the false statement in the course of the proceedings 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.

An unqualified statement of that which one does not know or reasonably believe to be true is equivalent to a statement of that which one knows to be false.

Perjury is a Class B crime.

5-16-2. FALSE ALARMS. Any person who knowingly:

- (1) Causes a false fire alarm or alarm of other type of emergency to be transmitted to or within any organization, official or

volunteer, for dealing with emergencies involving danger to life or property; or

(2) Gives false information to any law enforcement officer with the intent to implicate another crime; or

(3) Reports to law enforcement authorities a crime or other incident within their official concern knowing that said crime or incident did not occur; or

(4) Fails or refuses to give his correct name or address to a law enforcement officer in lawful discharge of his official duties;

is guilty of giving a false alarm.

Giving a false alarm is a Class B crime.

5-16-3. TAMPERING WITH WITNESSES.

Any person who, believing that an official proceeding or investigation is pending or about to be instituted, attempts to induce or otherwise causes a person to:

(1) Testify or inform falsely; or

(2) Without any testimony, information, documents, or things of value to the investigation; 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;

is guilty of tampering with a witness.

Tampering with a witness is a Class A crime.

5-16-4. RETALIATION AGAINST A

WITNESS. Any person who harms another person or property by an unlawful act in retaliation for anything done by said other person or member of his family in a capacity as a witness or informant, is guilty of retaliation against a witness.

Retaliation against a witness is a Class A crime.

5-16-5. SOLICITATION. Any person who solicits, accepts, or agrees to accept any benefit for doing any of the things prohibited by sections 5-16-1 and 5-16-3 above is guilty of solicitation to tamper with a witness.

Solicitation to tamper with a witness is a Class A crime.

5-16-6. TAMPERING WITH EVIDENCE.

Any person who, believing that an official proceeding or investigation is pending or about to be instituted:

- (1) Alters, destroys, conceals, or removes any record, document, or other potential item of evidence with the intent to impair its

accuracy or availability in such proceeding or investigation; or

(2) Makes, presents, uses or offers into evidence as genuine any record, document, or other thing, knowing it to be false and with the intent to mislead the finder of fact in such official proceeding or investigation; is guilty of tampering with evidence.

Tampering with evidence is a Class A crime.

5-16-7. TAMPERING WITH PUBLIC RECORDS. Any person who:

(1) 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 the United States or any state government for information or recording, or required by law to be kept by others for information of the Tribe or the United States or any state government; or

(2) Makes, presents, or uses any record, document, or other thing knowing it to be false, with the intent that it be taken as a genuine part of information or records referred to in (1) above; or

(3) Intentionally and unlawfully destroys, conceals, removes, or otherwise impairs the accuracy or availability of any record document, or thing, described in (1) above; is guilty of tampering with public records.

Tampering with public records is a Class A crime.

5-16-8. IMPERSONATING AN OFFICER OR PUBLIC SERVANT. Any person who falsely pretends to be a public servant or law enforcement officer with the intent to induce another person to submit to such pretended official authority or otherwise to act in reliance upon the pretense to his prejudice is guilty of impersonating a public servant or officer.

Impersonating a public servant or officer is a Class A crime.

5-16-9. DEFINITIONS. The word "official proceeding" means any proceeding before a legislative, judicial, administrative or other Tribal or government 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 proceeding described in this sentence.

The word "public servant" means any officer or employee of the Tribe, United States government or any state government, including judges and Tribal leaders, and any

person participating as a juror, advisor, consultant, or otherwise, in performing a governmental function, but the term does not include witnesses.

5-16-10. COMPOUNDING A CRIME. Any person who accepts or offers or agrees to accept any pecuniary benefit as consideration for:

(1) Refraining from seeking prosecution of an offender; or

(2) Refraining from reporting to law enforcement authorities the commission or suspected commission of any crime or information relating to a crime; is guilty of compounding a crime.

Compounding a crime carries the same penalty as the crime which was compounded, that is to say, **if the principal crime was a Class B crime, the penalty for compounding said crime would also be a Class B Crime.**

5-16-11. THREATENING OR INTIMIDATING A JUDICIAL OFFICER.

Any person who, directly or indirectly, utters or addresses any threat or intimation to any juror, referee, arbitrator, judge, hearing officer, umpire, assessor, or Tribal official authorized by law to hear or determine any controversy, with the intent to induce him either to do any act not authorized by law, or to omit or delay the performance of any duty imposed upon him by law, or for having performed any duty imposed upon him by law, **is guilty of a Class A crime.**

5-15-12. ATTEMPTING TO INFLUENCE JUROR AND OTHERS.

Any person who attempts to influence a juror, of any person summoned or drawn as a juror, or chosen as an arbitrator or appointed as a referee or Judge with respect to his verdict or decision in any cause or matter pending before him, or about to be brought before him;

(1) By means of any communication, oral or written, had with him, except in the regular course of proceedings upon the trial of the causes; or

(2) By means of any communication, oral or written, had with him, except in the regular course of the proceedings upon the trial of the cause; or

(3) By publishing any statement, argument, or observation relating to the causes;

is guilty of a Class A crime.

5-16-13. AGREEMENT TO GIVE A VERDICT. Any juror or person drawn or summoned as a juror or referee, arbitrator, judge, hearing officer, or any other person authorized by law to hear or determine a controversy, who makes any promise or agreement to give a verdict for or against any party is guilty of a **Class B crime**.

5-16-14. RESISTING ARREST. Any person who, with the intent of preventing a law enforcement officer from affecting an arrest or detention of himself or of any other person, or of discharging any other duty, creates a substantial risk of bodily harm to anyone, or employs a means justifying or requiring substantial force to overcome the resistance, regardless of whether there is a legal basis for the arrest or detention, is guilty of resisting arrest.
Resisting arrest is a Class B crime.

5-16-15. FAILURE TO APPEAR. Any person who, having been released pursuant to a posted bond, bail, or personal recognizance or any other release agreement, fails to appear before any Court or Judicial Officer as required shall forfeit any security which was given or pledged for such person's release and shall be Guilty of Failure to Appear.
Failure to Appear is a Class A crime.

CHAPTER 17 – DISORDERLY CONDUCT

5-17-1. Disorderly Conduct

5-17-1. DISORDERLY CONDUCT. Any person who intentionally causes serious public inconvenience, annoyance, or alarm to any other person, or creates a risk thereof by:

- (1) Engaging in fighting or in violent or threatening behavior; or
- (2) Making unreasonable noise; or
- (3) Disturbing any lawful assembly or meeting of persons without lawful authority; or
- (4) Obstructing vehicular or pedestrian traffic; or
- (5) Using abusive, indecent, profane, or vulgar language in a public place, or makes an offensive gesture or display in a public place, which language or gesture tends to incite an immediate breach of the peace; or
- (6) Creates by chemical means any noxious order in the a public place; or

- (7) Displays a firearm or other deadly weapon in a public place; or
- (8) Beggars in any public place for money or any other thing of value; is guilty of disorderly conduct.
Disorderly conduct is a Class C crime.

CHAPTER 18 – PROTECTIVE CUSTODY AND RELATED ALCOHOL CRIMES.

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| 5-18-11. | Protective custody |
| 5-18-12. | Public consumption of alcohol |
| 5-18-13. | Minor in possession of alcohol beverage |

5-18-11. PROTECTIVE CUSTODY. Any person who appears to be intoxicated by alcohol in a public place and to be in need of help, may be assisted to his home or may be taken into protective custody by law enforcement officers and taken forthwith to the hospital or to a jail for the purposes of detoxification. No person placed in protective custody under this section shall be held for a period exceeding 24 years. In taking a person into protective custody under this section, the detaining officer may take reasonable steps to protect himself. A taking into protective custody under this section is not an arrest. No warrants, complaints or summons shall issue pursuant to this section. Law enforcement officers are, however, specifically authorized to maintain records of the identity of persons placed in protective custody and dates thereof under this section for use in alcohol commitment proceedings and any other judicial proceeding where the person's use or abuse of alcohol may be in question.

5-18-2. PUBLIC CONSUMPTION OF ALCOHOL. Any person who voluntarily consumes any alcoholic beverages, or has in his possession an open package containing any alcoholic beverage in a public place, is guilty of public consumption. As used in the section, the word "public place" means any property which is not privately owned, or any private property which is ordinarily open to or has free access by the public, and includes any motor vehicle.
Public consumption of alcohol is a Class C crime.

5-18-03. MINOR IN POSSESSION OF ALCOHOL BEVERAGE. Any person under the age of 18 years who:

- (1) Possesses or consumes any beer, wine, ale, whiskey, or any other alcoholic beverage; or
 - (2) Misrepresents his age for the purpose of buying or otherwise obtaining any alcoholic beverage;
- is guilty of minor in possession of an alcoholic.

Minor in possession of an alcoholic beverage is a Class C crime.

CHAPTER 19 – CURFEW

5-19-1. Curfew violations - Amendment

5-19-1. CURFEW VIOLATIONS. Any person under the age of 18 years who is away from his/her place of residence in a public place or a private place, other than the place where he/she intends to spend the night with the permissions of the owner of such place and the permission of his/her parents or guardian, after the following times is guilty of curfew violations:

- 11:00 P.M. Sunday through Thursday when school is in session
- 12:00 A.M. Friday and Saturday and during the summer months.

This section shall not apply to those persons accompanied by a parent or guardian; or to persons in attendance at or returning directly home from an organized school, church, or Tribal functions.

Curfew Violation is a Class C crime.

Any child found to be in violation of this Ordinance shall be taken to the Police Department and held in a closely monitored room (to be checked on every 15 minutes), and his/her parent or guardian shall be immediately notified to pick up their child. Failure to pick up the child immediately will be a violation of Title 5, Chapter 8, Section 4, Child Neglect and a warrant to arrest will be issued and the child will be placed with a social service agency.

CHAPTER 20 – CONTRIBUTING TO THE DELINQUENCY OF A MINOR

5-20-1. Contributing to the delinquency of a minor

5-20-1. CONTRIBUTING TO THE DELINQUENCY OF A MINOR. Any person who:

(1) Sells or gives to or otherwise makes an alcoholic beverage available to a person under the age of 18 years; or

(2) By act omission, encourages, causes, or contributes to the delinquency of a person under the age of 18 years; is guilty of contributing to the delinquency of a minor.

It is no defense to this section that the person charged did not know or that the minor was in fact under the age of 18 years.

Contributing to the delinquency of a minor is a Class B crime.

CHAPTER 21 – DEFRAUDING CREDITORS AND RELATED CRIMES

- 5-21-1. Defrauding creditors
- 5-21-2. Making false credit report
- 5-21-3. Unauthorized transfer of mortgaged property

5-21-1. DEFRAUDING CREDITORS.

(1) Destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a valid security interest, lien, or mortgage, with the intent to hinder enforcement of said security interest, lien, or mortgage; or

(2) 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:

(a) Destroys, removes, encumbers, transfers, or otherwise deals with any property with the intent to defeat or obstruct the operation of any law relating to administration of property for the benefit of creditors; or

(b) Knowingly falsifies any writing or record relating to said property; or

(c) Knowingly misrepresents or refuses to disclose to any person entitled to administer property for the benefit of creditors, the existence, amount, or location of said property, or any other information which the actor could legally be required to furnish in relation to such administration; is guilty of defrauding creditors.

Defrauding creditors is a Class A crime.

5-21-2. MAKING FALSE CREDIT

REPORT. Any person who knowingly makes a materially false or misleading statement in writing for the purpose of obtaining property or credit or an extension of credit for himself or another person or to keep some other person from obtaining property or credit or

an extension of credit is guilty of making a false credit report.

Making a false credit report is a Class B crime.

5-21-3. UNAUTHORIZED TRANSFER OF MORTGAGED PROPERTY. Any person who owns, or has under his possession or control, any personal property which is the subject of a valid and enforceable security interest or other lien, and with respect to said property commits any of the following; namely:

(1) Willfully destroys, conceals, sells, or in any other manner disposes of or materially injures any part of said property without the written consent of the then holder of such security interest or other lien; or

(2) Willfully abandons said property without first giving written notice to the then holder of said security interest or other lien, of his intention to abandon such property; or

(3) When said property consists of livestock, willfully fails to notify the hold of said security interest or other lien upon such livestock of the death of any such livestock of the death of any such livestock immediately after the death of said livestock; or

(4) Removes any part of said property to a point outside the Rosebud Sioux Tribe Reservation without the written consent of the then holder of the security interest or other lien;

is guilty of unauthorized transfer of mortgaged property

Unauthorized transfer of mortgaged property is a Class A crime.

Paragraph (4) above shall not be applicable to motor vehicle used primarily for personal transportation or business which are temporarily off the Reservation in accordance with the usual and customary business or person transportation practices of the person who would otherwise be required to obtain permission to remove said vehicle from the Reservation.

CHAPTER 22 – ARSON AND RELATED OFFENSES

5-22-1.	Arson
5-22-2.	Burning to defraud insurer
5-22-3.	Owner of property defined
5-22-4.	Reckless burning

5-22-1. ARSON. Any person who intentionally sets fire to or burns or causes to be burned any structure or other real or personal property not his own without the

consent of the owners thereof, is guilty of arson.

Where the value of the property burned or damaged by fire is less than \$100, arson is a Class B crime.

Where the value of the property burned or damaged by fire is \$100 or more less than \$200, arson is a Class B crime.

Where the value of the property burned or damaged by fire is greater than \$200, arson is a Class A crime.

5-22-2. BURNING TO DEFRAUD

INSURER. Any person who, with the intent to injure or defraud an insurer, sets fire to or burns or causes to be burned any real or personal property of any kind, whether said property belongs to himself or any other person, which property is insured against fire, is guilty of a Class A crime.

5-22-3. OWNER OF PROPERTY

DEFINED. For the purposes of this chapter, the owner of any property includes all persons who have a legal or equitable interest in the property.

5-22-4. RECKLESS BURNING. Any person who:

1) Recklessly starts, or causes a fire to be started, which endangers human life; or

(2) Damages property of another by reckless use of fire; or

(3) Having started a fire, whether recklessly or not, and knowing that said fire is spreading and will endanger lives or property of another, either fails to take reasonable measures to put out or control said fire or fails to give a prompt fire alarm, is guilty of reckless burning.

Reckless burning is a Class B crime.

CHAPTER 23 – BURGLARY AND RELATED OFFENSES

5-23-1.	Burglary
5-23-2.	Defenses to simple trespass
5-23-3.	Aggravated trespass

5-23-1. BURGLARY. Any person who enters or remains in any structure with the intent to commit a crime therein is guilty of a burglary.

Burglary is a Class A crime.

(1) That the premises involved were at the time open to the public; or

(2) That the Defendant had at the time permission or a privilege to enter the structure.

5-23-2. SIMPLE TRESPASS. Any person who, knowing he is not privilege to do so, enters or remains in any place where notice against trespass is given by;

- (1) Actual communication to the actor by the owner of the premises or by any other authorized person; or
- (2) Posting of signs reasonably likely to come to the attention of intruders; or
- (3) Fencing or other type enclosure which a reasonable person would recognize as being designated to exclude intruders; is guilty of simple trespass.

Simple trespass is a Class C crime.

5-23-3. DEFENSES TO SIMPLE TRESPASS. The following are affirmative defenses to simple trespass, namely:

- (1) That the premises were at the time open to the members of the public; or
- (2) That the actor reasonably believed that the owner of the premises, or other authorized person, would have permitted him to enter or remain.

5-24-4. AGGRAVATED TRESPASS. Any person who, knowing that he is not privilege to do so, enters or remains upon property under circumstances not amounting to burglary, with the intent to commit a crime thereon, is guilty of aggravated trespass.

Aggravated trespass is a Class B crime.

CHAPTER 24 – ROBBERY

- 5-24-1. Robbery defined
- 5-24-2. Types of force or fear necessary to constitute robbery
- 5-24-3. Taking without knowledge of victim is not robbery

5-24-1. ROBBERY DEFINED. Any person who intentionally takes personal property, regardless of value, in the possession of another from his person or immediate presence, and against his will, accomplished by means of force or fear, is guilty of robbery.

Robbery is a Class A crime.

It is an affirmative defense to a charge of robbery that the actor has the right to take the property pursuant to legal process or otherwise pursuant to law.

5-24-2. TYPES OF FORCE OR FEAR NECESSARY TO CONSTITUTE

ROBBERY. To consider robbery, the amount or degree of force or fear employed as immaterial. However, the force or fear must be employed either to obtain or retain possession of the property or to prevent or overcome resistance to the taking. If force or fear is employed merely as a means of escape, it does not constitute robbery. The fear which constitutes an element of the offense of robbery may be either;

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

5-24-3. TAKING WITHOUT KNOWLEDGE OF VICTIM IS NOT ROBBERY.

The taking of property from the person of another or in his immediate presence is not robbery when it clearly appears that the taking was fully completed without his knowledge.

CHAPTER 25 – THEFT AND RELATED CRIMES

- 5-25-1. Theft defined
- 5-25-2. Categories of theft
- 5-25-3. Theft by fraud
- 5-25-4. Theft by extortion
- 5-25-5. Theft of lost, mislaid, or mistakenly delivered property
- 5-25-6. Receiving stolen property
- 5-25-7. Theft of services
- 5-25-8. Theft by embezzlement
- 5-25-9. Theft by credit card
- 5-25-10. General defense to theft
- 5-25-11. Recent possession of stolen property may be theft

5-25-1. THEFT DEFINED. Any person, who takes, steals, obtains, or exercises control over property of another with the intent to deprive the owner thereof, is guilty of theft.

5-25-2. CATEGORIES OF THEFT. Theft of any property or services under this chapter shall be punishable as follows:

- (1) If the value of the property or services involved is less than \$50, the theft shall be a Class C crime.

(2) If the value of the property or services involved is **\$50 or more but less than \$200, theft shall be a Class B crime.**

(3) If the value of the property or services involved is **\$200 or more, theft shall be a Class A crime.**

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 is otherwise proven that theft has been committed, **the crime shall be a Class C crime.**

5-25-3. THEFT BY FRAUD. Any person who obtains property of another by fraud is guilty of theft. A person commits fraud if he intentionally, regarding a matter material to the transaction:

(1) Creates or reinforces a false impression, including false impression as to law, value, intention or other state of mind; but fraud 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

(2) Prevents another from acquiring information which would affect his judgment regarding a transaction; or

(3) Fails to correct a false impression which the actor previously created or reinforced, or which the actor knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

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

The term "fraud" does not, however, include matters having no pecuniary significance, or mere puffing by statements unlikely to deceive ordinary persons.

5-25-4. THEFT BY EXTORTION. Any person who obtains or exercises control over property of another with the intent to deprive the owner thereof by extortion is guilty of theft.

Extortion occurs when a person threatens to:

(1) Inflict bodily injury on any person or commit any other criminal offense; or

(2) Accuse anyone of a criminal offense; or

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

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

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

(6) Testify or provide information, or withhold testimony or information, with respect to another's legal claim or defense; or

(7) 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 person relationship.

It is an affirmative defense to prosecution based upon paragraphs (2), (3), or (4) of this Section, that the property obtained was honestly due as restitution or indemnification for harm done in the circumstances to which the threat of accusation, exposure, or official action related, or as compensation for a legitimate debt.

5-25-5. THEFT OF LOST, MISLAID, OR MISTAKENLY DELIVERED PROPERTY.

Any person who comes into control or possession of property of another, and knowing or reasonably believing that said property has been lost, mislead, or delivered under a mistake as to the nature or amount of property or the identity of the recipient, and with the intent to deprive the owner thereof, fails to take reasonable measures to restore the property to the persons entitled thereto, is guilty of theft.

5-25-6. RECEIVING STOLEN

PROPERTY. Any person who receives, retains, or disposes of property of another, knowing that said property has been stolen, or believing that said property has probably been stolen, unless said property is received, retained, or disposed of, with the intent to restore the same to the owner thereof, is guilty of theft.

5-25-7. THEFT OF SERVICES. Any person who intentionally:

(1) Obtains services which he knows are available only for compensation by fraud, extortion, force, or any other means designed to avoid the regular payment therefore; or

(2) Having control over the disposition of services of other, to which he is not entitled,

diverts such services to his own benefit, or the benefit of another not entitled thereto; is guilty of theft.

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

The word "services" includes, but is not limited to labor, professional services, telephone or other public service, accommodation in motels, restaurants or elsewhere, admissions to places for which a charge for admission is made, the use of vehicles, or use of any other movable or real property.

5-25-8. THEFT BY EMBEZZLEMENT.

Any person, who has been entrusted with property belonging to another, who, with the intent to benefit any person not entitled to benefit from said property, appropriates said property to his own use to a use or a purpose not in the due and lawful execution of his trust, is guilty of theft by embezzlement. A distinct act of taking is not necessary to constitute theft by embezzlement.

A person is "entrusted with property of another" if he has possession or control of:

- (1) Real or personal property owned in whole or in part by a deceased person and which property is the proper subject of an estate proceeding; or
- (2) Real or personal property, the legal title to which is in the Rosebud Sioux Tribe or any subdivision thereof, the United States of America or any subdivision thereof, or of any financial institution; or
- (3) Real or person property, the legal title to which is in any person other than the actor, and which property is not subject to a lien or security interest in favor of the actor.

5-25-9. THEFT BY CREDIT CARD. Any person, who, by use of a credit card issued to another person, without the consent of the person to whom issued, or by use of a credit cart issued to another person, without the consent of the person to whom issued, or by use of a credit card which has been revoked or cancelled or has expired, or by use of a falsified, mutilated, altered, or counterfeit credit card, obtains property or services on credit, is guilty of theft.

5-25-10. GENERAL DEFENSE TO THEFT. It is an affirmative defense to any prosecution for theft that the Defendant acted under an honest claim of right to the property or service involved, or that he had a

right to acquire or dispose of said property or service as he did.

It is not a defense to theft that the actor has an interest in the property or services taken if any other person also has an interest that the actor is not entitled to infringe upon.

5-25-11. RECENT POSSESSION OF STOLEN PROPERTY MAY BE THEFT.

Possessions of property recently stolen, when no satisfactory explanation of such possession is made or available, shall give rise to a presumption that the person in possession of said property stole the same.

CHAPTER 26 – FORGERY AND RELATED CRIMES

- 5-26-1. Forgery defined
- 5-26-2. Criminal simulation
- 5-26-3. Possession, filing, or recording of forged instruments

5-26-1. FORGERY DEFINED. Any person who, with the intent to defraud, falsely makes changes or alters a written instrument of any kind, or passes such an instrument, is guilty of forgery.

Forgery is a Class A crime.

5-26-2. CRIMINAL SIMULATION. Any person who, with the intent to defraud, makes, alters, completes, or attempts to sell or circulate as genuine, any object other than a written instrument, so that the same appears to have valued because of antiquity, rarity, source, or authorship which it does not actually possess, is guilty of criminal simulation.

Criminal simulation is a Class B crime.

5-26-3. POSSESSING, FILING, OR RECORDING OF FORGED INSTRUMENTS. Any person who, with intent to defraud, knowingly offers for recording as a public record, possesses, or offers for filing with the Tribal Court or any public agency or the Rosebud Sioux Tribe or the United States of America or any of its political subdivisions, a forged instrument or a false instrument is guilty of filing, recording, or possessing a forged instrument.

Filing, recording, or possessing a forged instrument is a Class A crime.

CHAPTER 27 – BAD CHECKS

- 5-27-1. Check defined
- 5-27-2. Issuing bad checks
- 5-27-3. Jury instructions regarding bad checks

5-27-1. CHECK DEFINED. As used in this chapter, the word “check” means any check, draft, order, or other commercial device which orders a financial institution to pay a certain sum of money upon its presentation to said financial institution.

5-27-2. ISSUING BAD CHECKS. Any person who issues or passes a check for any of the following purposes, namely:

- (1) To then and there obtain money, property or other thing of value; or
- (2) To pay for rent, wages, salary, taxes due the Rosebud Sioux Tribe or the United States of America or any of its subdivisions, or as payment for services ordinarily paid immediately upon the rendering of such service, knowing or believing that said check will not be honored by the financial institution upon which the same was drawn, is guilty of issuing bad checks.

Issuing bad checks is a Class B crime if the check upon which the prosecution is based was returned because of insufficient funds in the account upon which the same was drawn.

Issuing bad checks is a Class A crime if the check upon which the prosecution was based is returned from the financial institution because no account existed in the financial institution against which the check was drawn at the time the check was passed.

5-27-3. JURY INSTRUCTIONS REGARDING BAD CHECKS. In any prosecution or bad checks where the same is tried to a jury, the jury shall be instructed that where a check in evidence was returned from the financial institution because of insufficient funds in the account against which it was drawn, or because no account existed in the financial institution against which the check was drawn at the time the check was passed, such evidence is sufficient upon which to base a conviction of bad checks unless such return by the financial institution is satisfactorily explained by the facts and circumstances brought out at the trial.

The jury shall be instructed that no person can be convicted of issuing bad checks where the evidence established that the checks was post dated, or was a “hold”

check, or was issued in payment for credit previously negotiated or arranged.

CHAPTER 28 – DRUGS AND CONTROLLED SUBSTANCES

- 5-28-1. Definitions
- 5-28-2. Standards and schedules
- 5-28-3. Schedule I - Opiates and hallucinogenics
- 5-28-4. Schedule II – Opium and amphetamines
- 5-28-5. Schedule III – Depressants and narcotics
- 5-28-6. Schedule IV – Barbiturates
- 5-28-7. Schedule V – Prescription drugs
- 5-28-8. Exclusion from schedule
- 5-28-9. Regulation of manufacture
- 5-28-10. Distribution, manufacture, or possession with intent to distribute
- 5-28-11. Unlawful possession of controlled substance
- 5-28-12. Peyote exemption
- 5-28-13. Inhabiting a room where controlled substance is illegally stored or used
- 5-28-14. Sale of Lysol prohibited

5-28-1. DEFINITIONS. The following definitions are applicable to this section:

- (1) “Controlled substances” means a drug, substances, 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 included 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 use or research subject by, or pursuant to the lawful order of a practitioner (in the course of professional practice or research), including prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery.
- (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 seed thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plants, its seeds, or resin; but shall not include the mature stalks of such plants, 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, cake, or the sterilized seed of such plant which is incapable of germination.

(8) "Narcotic drugs" means coca leaves, opium, cannabis, isonipicaine, amideone, isoamideone, 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.

(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 government 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 by him or by a member of his household.

5-28-2. STANDARDS AND SCHEDULES.

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

5-28-3. SCHEDULE 1 – OPIATES AND HALLUCINOGENICS.

Schedule I shall initially consist of the controlled substances listed in this section, as follows:

(1) 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:

- (a) Allylprodine
- (b) Benzethidine
- (c) Betaprodine
- (d) Clonazepam
- (e) Dextropropion
- (f) Diampromide
- (g) Diethylthiambutene
- (h) Dimenoxadol
- (i) Dimethylthiambutene
- (j) Diozaphetyl Butyrate
- (k) Dipipanone
- (l) Ethylmethylthiambutene
- (m) Etonitazepam
- (n) Etoxadine
- (o) Furethidine
- (p) Hydroxypethidine
- (q) Ketobemidone
- (r) Levophenacetylmorphan
- (s) Meperidine
- (t) Methadol
- (u) Moramide
- (v) Morpheridine
- (w) Noracymethadol
- (x) Norlevorphanol
- (y) Normethadone
- (z) Norpipanone
- (A) Phenadoxone
- (B) Phenampromide
- (C) Phenomorphan
- (D) Phenorperidine
- (E) Piritramide
- (F) Proheptazine
- (G) Proheptazine
- (H) Propiram
- (I) Trimeperidine

(2) 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:

- (a) Acetorphine
- (b) Acthidihydrocodeine
- (c) Benzylmorphine
- (d) Codeine methyrbromide
- (e) Codeine-N-Oxide
- (f) Cyprenorphine
- (g) Desomorphine
- (h) Dihydromorphine
- (i) Etorphine
- (j) Heroin
- (k) Hyrdomorphinol
- (l) Methyldesorphine
- (m) Methyldihydromorphine
- (n) Norphine methylbromide
- (o) Morphine methysulfonate
- (p) Morphine-N-Oxide
- (q) Myrophine
- (r) Nicocodeine
- (s) Nicomorphine
- (t) Normorphine
- (u) Pholcodine
- (v) Thebacon

(3) 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:

- 3, 4-methylenedioxy amphetamine
- 5-methoxy-3, 4-methylenedioxy amphetamine
- 3, 4, 5-trimethoxy amphetamine
- Bufotenine
- Diethyltryptamine
- Dimethyltryptamine
- 4-methyl-2, 5-dimethoxyamphetamine
- Ibogaine
- Lysergic acid diethylamide
- Marijuana
- Peyote
- N-ethyl-3-piperidyl benzilate
- N-methyl-3-piperidyl benzilate
- Psilocybin
- Psilcoyn
- Tetrahydrocannabinols and synethetics equialents of the substances contained in the plant, or in the resinous extractives of cannabis or synthetic substances, derivatives and their isomers with similar chemicals 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.

5-28-4. SCHEDULE II – OPIUM AND AMPHETAMINES. Schedule II shall initially consist of the controlled substance listed in this section, as follows:

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

(a) 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) Powered opium
- (E) Granulated opium
- (F) Tincture of opium
- (G) Apomorphine
- (H) Codeine
- (I) Ethylmorphine
- (J) Hudrocodone
- (K) Hudromorphine
- (L) Metopon
- (M) Morphine
- (N) Oxycodone
- (O) Oxymorphone
- (P) Thebaine

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

- (c) Opium poppy and poppy straws;
- (d) 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.

(2) 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:

- (a) Alphaprodine
- (b) Anileridine
- (c) Besitramide
- (d) Dihydrocodeine
- (e) Dephenoxylate
- (f) Fentanyl
- (g) Isomethadone
- (h) Levomethorphan
- (i) Levorphanol
- (j) Metazocine
- (k) Methadone
- (l) Methadone-Intermediate, 4-cyano-2dimethylamino-4, 4-diphenyl butane
- (m) Moramide-Intermediate, 2-methyl-3-

- corpholino-1, 1-duphenylporpane-carboxylic acid
- (n) Pethidine
- (o) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine
- (p) Pethidine-Intermediate-B, ethyl-4-phenyl-piperidine-4-carboxylate
- (q) Pethidine-intermediate-C, 1-methyl-4-phenyl-piperidine-4-carboxylic acid
- (r) Phenazocine
- (s) Piminodine
- (t) Racemethorphan
- (u) Racemorphan

(3) 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:

- (a) Amphetamine, its salts, optical isomers, and salts of its optical isomers
 - (b) Methamphetamine, including its salts, isomers, and salts of isomers
 - (c) Methylphenidate and its salts
 - (d) Phenmetrazine and its salts
- (4) Methaqualone

5-28-5. SCHEDULE III – DEPRESSANTS AND NARCOTICS.

(1) Schedule III shall initially consist of the controlled substances listed in this section, as follows.

(2) 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:

(a) Any substance which contains any quantity of a derivative or barbituric acid, or any salt of a derivative or barbituric acid, except those substances which are specifically listed in other schedules.

- (b) Chlorkexadol
- (c) Glutethimide
- (d) Lysergic acid
- (e) Lysergic acid amide
- (f) Methyprylon
- (g) Phencyclidime
- (h) Sulfondiethylmethane
- (i) Sulfonethymethane
- (j) Sulfonmethane

(3) Nalorphine

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

(a) 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

an equal or greater quantity of an isoquinoline alkaloid of opium.

(b) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milliliters per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts.

(c) Not more than 300 milligrams of dihydrocodeine, 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.

(d) Not more than 300 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(e) 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, non-narcotic ingredients in recognized therapeutic amounts.

(f) 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

(g) 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, non-narcotic ingredients in recognized therapeutic amounts.

(h) Not more than 50 milligrams of morphine, of any of its salts, per 100 milliliters or per 100 grams with one or more active non-narcotic ingredients in recognized therapeutic amounts.

5-28-6. SCHEDULE IV – BARBITURATES.

(1) Schedule IV shall initially consist of the controlled substances listed in this section, as follows:

(2) 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:

- (a) Barbital
- (b) Chloral Betaine
- (c) Chloral Hydrate
- (d) Ethchlorvynol
- (e) Ethinamate
- (f) Methohexital
- (g) Meprobamate
- (h) Methylphenobarbital
- (i) Paraldehyde
- (j) Petrichloral

(k) Phenobarbital
(3) Any compound, mixture, or preparation containing any depressant substances listed in Section (2) 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.

5-28-7. SCHEDULE V – PRESCRIPTION DRUGS.

(1) Schedule V shall initially consist of the controlled substances listed in this section, as follows:

(2) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contain one or more non-narcotic 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:

(a) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(b) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(c) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(d) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(e) Not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams.

5-28-8. EXCLUSION FROM SCHEDULE.

A non-narcotic 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 Tribal Council shall have no power to include a non-narcotic substance in 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.

5-28-9. REGULATION OF MANUFACTURE, DISTRIBUTION AND

DISPENSING OF CONTROLLED SUBSTANCES.

(1) Registration Requirements

(a) Every person who manufactures, distributes, analyzes, or dispenses any controlled substances within the exterior boundaries of the Rosebud Sioux Tribe Indian Reservation must possess a valid registration from the South Dakota State Board of Pharmacy. Said registrations must be obtained annually and be in compliance with all rules and regulations promulgated by the State.

(b) Persons registered with the State of South Dakota or the United States of America 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.

5-28-10. DISTRIBUTION, MANUFACTURE, OR POSSESSION WITH INTENT TO DISTRIBUTE. Except as authorized by this Act, any person who knowingly or intentionally manufactures, distributes, or possesses with intent to manufacture or distribute a controlled substance listed in Schedules I through V, **is guilty of a Class A crime.**

5-28-11. UNLAWFUL POSSESSION OF CONTROLLED SUBSTANCE. Except as authorized by this Act, any person who 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, **is guilty of a Class B crime.**

5-28-12. 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.

5-28-13. INHABITING A ROOM WHERE CONTROLLED SUBSTANCE IS ILLEGALLY STORED OR USED. Any person who inhabits a room knowing that any controlled drug or substance is being illegally stored or used therein **is guilty of a Class B crime.**

5-28-14. SALE OF LYSOL PROHIBITED. It shall be unlawful for any merchant to sell Lysol within the boundaries of the Rosebud Sioux Reservation. A violation of this provision is a **Class C crime**. The Rosebud Sioux Tribal Court shall have the authority to enforce this provision by injunction.

CHAPTER 29 – MARIJUANA

- 5-29-1. Possession of marijuana
5-29-2. Manufacture, distribution, or possession with intent to distribute
5-29-3. Distribution of marijuana to a minor

5-29-1. POSSESSION OF MARIJUANA. No person shall knowingly possess marijuana. **Any person who knowingly possesses marijuana is guilty of a Class B crime if the amount of marijuana possessed is 1 ounce or less. Possession of more than 1 ounce of marijuana is a Class A crime.**

5-29-2. MANUFACTURE, DISTRIBUTION, OR POSSESSION WITH INTENT TO DISTRIBUTE. Any person who knowingly:
(1) Grows marijuana; or
(2) Manufactures marijuana; that is to say packages, repackages, dries, or prepares marijuana for distribution; or
(3) Distributes marijuana; or
(4) Possesses marijuana with the intent to distribute the same;
is guilty of a Class A crime.

5-29-3. DISTRIBUTION OF MARIJUANA TO A MINOR. Any person who distributes marijuana, with or without consideration, to any other person under the age of 18 years is guilty of distribution of marijuana to a minor. It is not defense to a prosecution under this section that the defendant was not aware of the true age of the other person to whom the marijuana was distributed.
Distribution of marijuana to a minor is a Class A crime.

CHAPTER 30 – BRIBERY AND ABUSE OF PUBLIC OFFICE

- 5-30-1. Bribery of public office
5-30-2. Solicitation of a bribe
5-30-3. Inability to act no defense

- 5-30-4. Selling official conduct
5-30-5. Selling omission of official conduct
5-30-6. Bribery or unlawful influence of the tribal council
5-30-7. Solicitation by the tribal council
5-30-8. Attempting to influence a judge - **Amendment**
5-30-9. Nullification of legislative and/or executive action over judicial acts - **Amendment**

5-30-1. BRIBERY OF PUBLIC OFFICE. Any person who gives or offers to give a bribe to any public officer or employee with the intent to influence him in respect to any act, decision, vote, opinion, or other proceeding which the public officer or employee is responsible for, is guilty of bribery of a public officer.
Bribery of a public officer is a Class A crime.

5-30-2. SOLICITATION OF A BRIBE. Any public officer or employee who asks, receives or agrees to receive a bribe upon an agreement or understanding that his vote, opinion or action upon any matter then pending, or which may by law be brought before him in his official capacity will be influenced thereby is guilty of solicitation of a bribe.
Solicitation of a bribe is a Class A crime.

5-30-3. INABILITY TO ACT NO DEFENSE. It is no defense to prosecution under sections 5-30-1 and 5-30-2 above that the person sought to be influenced or bribed was not qualified to act in the desired way because he had not yet assumed office, lacked authority, or for any other reason.

5-30-4. SELLING OFFICIAL CONDUCT. Any public officer or employee who asks for or receives any pecuniary benefit for the performance of any official function which has not been performed, or who asks for or receives any pecuniary benefit for doing any official act, is guilty of selling official conduct. It is an affirmative defense to a charge under this section that the fees or consideration received or requested by the public official were authorized by law or required to be collected by law.
Selling official conduct is a Class A crime.

5-30-5. SELLING OMISSION OF OFFICIAL CONDUCT. Any public officer or employee who asks for or receives any pecuniary benefit or other consideration for omitting or deferring performance of any official conduct, is guilty of selling omission of official conduct.

Selling the omission of official conduct is a Class A crime.

5-30-6. BRIBERY OR UNLAWFUL INFLUENCE OF THE TRIBAL COUNCIL.

Any person who gives or offers to give a bribe to any member of the Tribal Council or attempts directly or indirectly by menace, deceit, or any other unlawful means, to influence a Tribal Council member in giving or withholding his vote or in not attending a Council meeting or meeting of any Committee thereof is guilty of unlawful influence of the Tribal Council.

Unlawful influence of the Tribal Council is a Class A crime.

5-30-7. SOLICITATION BY THE TRIBAL COUNCIL.

Any member of the Tribal Council who asks, receives, or agrees to receive any bribe or other consideration upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby or shall be given in any manner upon which he will be required to act in his official capacity, is guilty of solicitation by the Tribal Council.

Solicitation by the Tribal Council is a Class A crime.

(1) There shall be no ex parte communication between any member of the Rosebud Sioux Tribal Council or the Office of the President or Vice President or any of their employees or agents who are not an official party to cause of action to the court, any judge of the Rosebud Sioux Tribal Court or the Rosebud Sioux Supreme Court, in an attempt to influence, by any means any ruling outcome or decision of any cause of action, case or matter before the court, whether pending or completed. If any such person attempts to have ex parte communication with a judge concerning any court matter pending or completed, it will be the duty of the judge to whom such an attempt was made to report the attempt to all parties to the case and the official court record.

(2) No order, judgment sentence or ruling of a judge of the Rosebud Sioux Tribe Court or the Rosebud Sioux Tribe Supreme Court shall be subject to review, amendment, or nullification by the Tribal Council or the

Office of the Tribal President. Any legislative, administrative, or executive act or order which seeks or purports to modify, vacate, or nullify any judicial act or order, in violation of this ordinance shall be deemed null and void as a matter of law.

5-30-8. ATTEMPTING TO INFLUENCE A JUDGE.

Any member of the Rosebud Sioux Tribal Council or the Office of the President or Vice President or any of their employees or agents who shall communicate with any Judge of the Rosebud Sioux Tribal Court or the Rosebud Supreme Court, concerning any Court matter, pending or completed **is guilty of Attempting to influence a judge is a Class A crime.**

It will be the duty of the Judge to whom such an attempt to influence was made upon to report the attempt to all parties to the case on the official Court record.

5-30-9. NULLIFICATION OF LEGISLATIVE AND/OR EXECUTIVE ACTION OVER JUDICIAL ACTS.

No order, judgment, sentence or ruling of the Rosebud Sioux Tribal Court or Rosebud Sioux Supreme Court shall be subject to review, amendment or nullification by the Rosebud Sioux Tribal Council or the Office of the Tribal President or the Vice President or any of their employees or agents. Any legislation, administrative or executive act or order which seeks or purports to modify, vacate or nullify any judicial act or order in violation of this ordinance shall be deemed null and void as a matter of law.

CHAPTER 31 – RIOT AND RELATED CRIMES

- 5-31-1. Riot
- 5-31-2. Failure to disperse
- 5-31-3. Street gang activity and membership – **Amendment**
- 5-31-4. Definition - **Amendment**
- 5-31-5. Drive by shooting - **Amendment**
- 5-31-6. Participating in drive-by shooting - **Amendment**
- 5-31-7. Gang related congregations - **Amendment**
- 5-31-8. Recruiting a gang member in the first degree - **Amendment**
- 5-31-9. Recruiting a gang member with force - **Amendment**
- 5-31-10. Recruiting a gang member without force - **Amendment**

- 5-31-11. Sexual imposition - **Amendment**
- 5-31-12. Prohibiting encouragement to minors to participate in a criminal street gang - **Amendment**
- 5-31A-1. Pre-diversion - **Amendment**
- 5-31A-2. Diversion - **Amendment**

5-31-1. RIOT. Any person who:

- (1) Simultaneously with two or more other persons engage in threatening or violent conduct and thereby knowingly or recklessly creates a substantial risk of causing public alarm; or
 - (2) Assembles with two or more persons with the purpose of engaging immediately thereafter in threatening or violent conduct, knowing or having reason to believe that two or more persons in the assembly have the same purpose;
- is guilty of riot.

Riot is a Class A crime.

5-31-2. FAILURE TO DISPERSE. Any person who refuses or willfully fails to obey an order to disperse or leave the immediate vicinity given by a law enforcement officer or other public servant performing the function of a law enforcement officer 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 investigation of the scene of an accident or the commission of a fire, crime, or suspected crime is guilty of failure to disperse.

Failure to disperse is a Class B crime.

5-31-3. STREET GANG ACTIVITY AND MEMBERSHIP. Any person who is a member of a street gang or involved in street gang activity is guilty of Street Gang Activity and Membership.

Street Gang Activity and Membership is a Class A crime.

5-31-4. DEFINITIONS.

- (1) "Street Gang" a formal or informal ongoing organization, association or group of three or more persons who have a common name or common identifying signs, colors or symbols and have members or association who, individually or collectively, engage in or have engaged in a pattern of street gang activity;
- (2) "Street Gang Member" a person who engages in a pattern of street gang activity and who meets two or more of the following criteria:

- (a) Admits to gang membership;

- (b) Is identified as a gang member by a documented reliable informant;

- (c) Resides in or frequents a particular gang's area and adopts its style of dress, its use of hand signs or its tattoos and associated with known gang members;

- (d) Is identified as a gang member by an informant of previously untested reliability is such identification is corroborated by independent information;

- (e) Has been arrested more than once in the company of identified gang members for offenses which are consistent with usual gang activity;

- (f) Is identified as a gang members by physical evidence, such photographs or other documentation; or

- (g) Has been stopped in the company of known gang members four or more times.

(3) "Pattern of Street Gang Activity" the commission, attempted commission or solicitation by any member or members of a street gang of two or more or offenses on separate occasions within a three-year period for the purpose of furthering gang activity as evidenced by the following:

- (a) Intentionally organizing, managing, directing or supervising a criminal street gang with the intent to promote or further the criminal objectives of the street gang;

- (b) Knowingly enticing and inducing others to engage in violence or intimidation to promote or further the criminal objectives of the street gang.

- (c) Furnishing advice or direction in the conduct, financing or management of a street gang's affairs with the intent to promote or further the objectives of a street gang;

- (d) Hiring, engaging or using a minor for any conduct preparatory to or in furtherance of any offense in this section.

- (e) Committing, attempting to commit or soliciting one or more criminal offenses prescribed by this Ordinance or the Tribal Law and Order Code with the intent to promote or advance the objectives of a street gang.

5-31-5. DRIVE BY SHOOTING. Any person who discharges a firearm or causes the propulsion of any explosive or explosive device from a motor vehicle whether the vehicle is moving or stopped at the time of the discharge or propulsion is guilty of Drive-By Shooting.

Drive-By Shooting is a Class A crime.

5-31-6. PARTICIPATING IN DRIVE-BY SHOOTING. Any person who of his or her own will is physically present in a vehicle

used in a drive-by shooting is guilty of Participating in Drive-By Shooting.

Participating in Drive-By Shootings is a Class A crime.

5-31-7. GANG RELATED

CONGREGATIONS. Any person, known to be a street gang member, as defined above, who is found loitering in a public place with two or more other persons and who fails to remove themselves from the area when ordered by a police officer, property owner or school authorities is in violation of this Ordinance.

5-31-8. RECRUITING A GANG MEMBER IN THE FIRST DEGREE.

A person commits the crime of recruiting a gang member in the first degree if the person uses or threatens the use of force against a person or property to include a person to participate in a criminal street gang or to commit a crime on behalf of a criminal street gang.

Recruiting a gang member in the first degree is a Class A crime.

5-31-9. RECRUITING A GANG MEMBER WITH FORCE.

A person commits the crime of recruiting a gang member with force if the person is 18 years of age or older and with force or threat of force encourages or recruits a person who is under 18 years of age to participate in a criminal street gang.

Recruiting a gang member with force is a Class A crime.

5-31-10. RECRUITING A GANG MEMBER WITHOUT FORCE.

A person commits the crime of recruiting a gang member without force if the person is 18 years of age or older and without force or the threat of force encourages or recruits a person who is under 18 years of age to participate in a criminal street gang.

Recruiting a gang member without force is a Class B crime.

5-31-11. SEXUAL IMPOSITION. A person commits the crime of sexual imposition if the person engages in a sexual act or sexual contact with another or who causes another to engage in a sexual act or sexual contact, whether consensual or not, as part of an induction, initiation, ceremony, pledge, hazing, or qualification to become a member or an associate of any criminal street gang or as a part of a release from a criminal street gang.

Sexual imposition is a Class A crime.

5-31-12. PROHIBITING ENCOURAGEMENT TO MINORS TO PARTICIPATE IN A CRIMINAL STREET GANG.

A parent, guardian, friend or any other relative commits the crime of encouraging minors to participate in a criminal street gang if the parent, guardian, friend or any other relatives allow and/or encourages minors to participate in any criminal street gang.

Encouraging minors to participate in a criminal street gang is a Class A crime.

5-31A-1. PRE-DIVERSION.

- A. Send out Summons to parent(s)/guardian(s) and child.
- B. Parent(s)/guardian(s) and child will meet with Diversion Officer.
- C. Evidence of child's involvement will be provided to parent(s)/guardian(s).
 - I. Pre-diversion Contract will be discussed and signed.
- D. If there is evidence of continued violation or participation of the child in gang, the child and parent(s)/guardian(s) will be referred to Diversion.

5-31-A-2. DIVERSION.

- A. Send out Summons to parent(s)/guardian(s) and child.
- B. Parent(s)/guardian(s) and child will meet with Court Services Officer.
- C. Parent(s)/guardian(s) and child will acknowledge involvement.
- D. Parent(s)/guardian(s) and child will sign documents to enter Diversion Program.
 - I. Documents necessary for Diversion Program.
 - (a) Parental Responsibility Form
 - (b) Individualized Plan
 - (c) Agreement to attend gang education classes
 - (d) Agreement to attend cultural/spiritual education classes
 - (e) Agreement to attend counseling with Elders
 - (f) Agreement to attend specialized parenting program
 - (g) Agreement to attend alcohol/drug abuse education classes
 - II. Schedule of classes will be provided to parent(s)/guardian(s)
- E. If the parent(s)/guardian(s) and child dispute evidence of child's involvement in a gang, an Informal Hearing will be set up before a Hearing Officer.

I. If the Hearing Officer finds the child is involved in a gang, parent(s)/guardian(s) and child will follow diversion procedure.

II. If the Hearing Officer does not find that the child is involved in a gang, the case will be closed.

F. If there is evidence of continued violation the child and/or the parent(s)/guardian(s) will be formally charged in Children's Court.

I. Procedure will be the same as specified in the Rosebud Sioux Tribe's Law and Order Code.

CHAPTER 32 – HUFFING

5-32-1. Huffing

5-32-1. HUFFING. Any person who intentionally ingests, inhales, breathes, or otherwise takes into his body any substance, except an alcoholic beverage, for the purpose of becoming intoxicated, unless such substance is prescribed by a physician or other practitioner of the medical arts lawfully practicing within the scope of his practice, is guilty of huffing.

Huffing is a Class B crime.

CHAPTER 33 – INVASION OF PRIVACY

5-33-1. Trespassing with intent to eavesdrop

5-33-2. Window peeking

5-33-1. TRESPASSING WITH INTENT TO EAVESDROP.

Any person who:
(1) Trespasses on property with the intent to subject anyone to eavesdropping or other surveillance in a private place; or

(2) 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; is guilty of trespassing with intent to eavesdrop.

It is an affirmative defense to this section that the actor had legal authorization to engage in the conduct here prohibited or that the actor was a law enforcement officer or acting under the direction of a law enforcement officer and engaged in the performance of lawful duties.

Trespassing with intent to eavesdrop is a Class B crime.

5-33-2. WINDOW PEEKING. Any person who enters private property of another and peeks in the door or window of any inhabited building or structure located thereon without having lawful purpose with the owner or occupant thereof is guilty of window peeking.

Window peeking is a Class C crime.

CHAPTER 34 – HABITUAL OFFENDERS

5-34-1. Increased penalties for persons with prior convictions

5-34-2. Duty to report knowledge of prior conviction

5-34-3. Prior conviction information

5-34-4. Procedure with regard to prior convictions information

5-34-1. INCREASED PENALTIES FOR PERSONS WITH PRIOR CONVICTION. In any criminal prosecution under this Code where it appears that the Defendant has been previously convicted by this Court under the same statute one or more times previously within the last 1 year, the penalty for the crime charged shall be increased to the next class which is more severe, one class for each prior conviction, which has been established. An example of what is intended here would be as follows. If a Defendant was charged under a section which was a Class C crime, and the evidence established that the same person had been convicted of the same offense one time previously within the last 1 years then such event the penalty for the violation of that section would be increased by one class and the Defendant upon conviction would thereby be punished as for a Class B crime.

5-34-2. DUTY TO REPORT KNOWLEDGE OF PRIOR CONVICTION. Whenever any jailor, probation or parole officer, law enforcement officer, or other Tribal or U.S. government official has knowledge that any person charged in this Court has been previously convicted of a like offense, it shall become his duty forthwith to report the same to the Tribal prosecutor.

5-34-3. PRIOR CONVICTION INFORMATION. An allegation that a Defendant has prior convictions must be filed as a separate charge at the time of or before arraignment. The information must state the times, places, and specific crimes alleged to

be prior convictions and must be signed by the Tribal prosecutor. An official Court record under seal will be sufficient to be admitted into evidence without further foundation to prove the allegation that the Defendant has prior convictions

5-34-4. PROCEDURE WITH REGARD TO PRIOR CONVICTIONS INFORMATION.

The Defendant shall be apprised of the prior convictions charge and shall be arraigned on said charge at the same time as arraignment on the principal charge. In the event the jury trial on the principal charge, the jury shall not be advised of the prior convictions charge until they have reached a verdict on the principal crime. If the operative effect of this chapter is to increase the penalty for the crime to a point where the right to jury trial is invoked, the Defendant shall be entitled to separate jury trials on the principal offense charged and on the prior convictions charge, although the same jury may hear both cases.

CHAPTER 35 – GAME, FISH & PARKS CODE

- 5-35-1. General provisions and definitions
- 5-35-2. Powers and duties of the department of natural resources
- 5-35-3. Procedural rules
- 5-35-4. General licensing, hunting and fishing provisions - **Amendment**
- 5-35-5. Big game provisions
- 5-35-6. Fishing regulations
- 5-35-7. Trapping
- 5-35-8. Forestry
- 5-35-9. Recreation

5-35-1. GENERAL PROVISIONS AND DEFINITIONS.

(a) INTENT. It is the intent of the provisions contained herein to provide for an orderly system on the Rosebud Sioux Indian Reservation for the management and control of the wildlife, fishery, forest, and outdoor recreation resources of the Rosebud Sioux Tribe.

(b) JURISDICTION. The provisions contained herein specifically address all lands within the boundaries of Todd County, South Dakota, all territory of the Tribe outside of Todd County but within the original boundaries of the Rosebud Sioux Indian Reservation, and all matters contained herein relating to propagation, conservation, management, distribution, transportation,

storage, and taking of fish and game, relating to the management, conservation and control of reservation lands, forests and waters for fish and game purposes, and relating to fishing, hunting, trapping, timber harvest, sale, barter, and exchange of fish, game, timber, and timber products from the local resources on the Rosebud Sioux Indian Reservation and relating to the use of boats, snowmobiles and other off-road recreational vehicles on the Rosebud Sioux Indian Reservation as well as other outdoor recreational activities are all subject to the absolute jurisdiction of the Rosebud Sioux Tribe.

(c) FORESTS, FISH AND WILDLIFE PROPERTY OF THE TRIBE.

(1) All fish, wildlife and forest resources, now and hereafter within the Rosebud Indian Reservation, not held in private ownership legally acquired, and which for the purposes of this code shall include all big game animals, game birds, water fowl, game fish, reptiles, amphibians, fur bearing animals, and all other forms of wildlife, and all forest and timber stands, whether harvested or unharvested mentioned in these provisions, are hereby declared to be the property of the Rosebud Sioux Tribe and no right, title, interest or property therein can be acquired or transferred or the possession thereof had or maintained, except as herein expressly provided.

(2) It shall be lawful for the Department of Natural Resources or any person or entity appointed by it in writing so to do under the direction of the Director of the Department of Natural Resources, to take fish and wildlife, or cut timber for the purpose of inspection, cultivation, propagation, distribution, scientific, or other purposes deemed by it to be in the best interest of the fish, game and timber industry of the Tribe.

(d) COOPERATIVE AND RECIPROCAL AGREEMENTS.

The Department of Natural Resources is hereby authorized, subject to the approval of the Rosebud Sioux Tribal Council, to enter into reciprocal and cooperative agreements with the State of South Dakota and any other governments or governmental agencies, federal or otherwise, for the purposes of promoting and implementing fishery, and wildlife management programs, forestry programs and outdoor recreational activities.

(e) DEFINITIONS; INTERPRETATION.

The following terms, words and definitions shall be used in Chapter 35 and shall have the meaning so ascribed to them in the respective sections unless a different meaning clearly appears from the context.

(1) "Reservation" means all territory within the boundaries of Todd County, South Dakota, all territory outside of Todd County, South Dakota but within the original boundaries of the Rosebud Sioux Reservation, and any and all territory within the exterior boundaries within that land area referred to as Rosebud Sioux Indian Reservation by federal law.

(2) "Tribe" means Rosebud Sioux Tribe.

(3) "Tribal Court" means Rosebud Sioux Indian Tribal Court.

(4) "Department" means Rosebud Sioux Tribal Department of Natural Resources.

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

(6) "Possession" means physical possession or control of any undomesticated game or nongame animal or parts thereof, on ones person, premises, motor vehicle, or public or private place of processing or storage.

(7) "Motor Vehicle" means a motorized vehicle including any trailed or towed vehicle which may travel on land, water, snow, or air.

(8) "Big Game Tag" means an adhesive-backed tag issued with big permit which must be attached around the hock of the big game animal at the time it is taken.

(9) "Antlered" means a male animal with a visible antler at least four inches above the head.

(10) "Anterless" means any animal not classified as antlered as defined in number 9 above.

(11) "Loaded Firearm" means any firearm containing cartridges in the chamber, clip or magazine.

(12) "Hunt/Trap" means any effort to kill, injure, capture or disturb any wild animal or wild bird as defined herein.

(13) "Fish" means any effort made to kill, injure, disturb, capture, or otherwise possess fish in and from the waters of the Rosebud Sioux Indian Reservation.

(14) "Carcass" means the dead body of any wild animal to which it refers including the head, hair, skin, plumage, skeleton, or any other parts thereof.

(15) "Game" means all wild animals and birds for which hunting seasons have been established by provisions contained within this chapter.

(16) "Game Fish" means all species belonging to the paddlefish, sturgeon, salmon, trout, pike, catfish, bullheads, sunfish, black bass, bluegill, crappies, perch, walleye, and sauger families of fish species.

(17) "Rough Fish" means any and all fish species, not included in the game fish families.

(18) "Nongame Species" means all species of birds and animals which are not listed or covered or provided for within the provisions of this chapter and are protected.

(19) "Restricted water or trout Water" means that fishing methods on any lake, pond, stream, or any part thereof may be limited to the use of artificial lures or bait other than live fish.

(20) "Bag Limit" means maximum number of game species which may be legally taken per day and shall include maximum number of each species of sex.

(21) "Possession Limit" means maximum number of game species which may be possessed.

(22) "Seasons" means all of the time during the entire year except during the "open season" as specified by regulation or ordinance of the Rosebud Sioux Tribal Council.

(23) "Open Season" means the time specified by rule, regulation, order, resolution or ordinance or the Rosebud Sioux Tribal Council when it shall be lawful to hunt, fish, or trap for any animals, birds or fish. Each period of said time shall be specified as an "open season" and the period during each day when these activities can legally take place.

(24) "Closed Waters" means any lake, pond, river, stream, body of water or any part thereof within the Rosebud Indian Reservation wherein it shall be unlawful to fish, hunt, or trap, said waters may be closed to one or all of these activities depending on the designation of these waters.

(25) "Predator" means animals which kill and eat the flesh of other animals.

(26) "Fur Bearer" means animals which are taken primarily for sale of their pelts.

(27) "Resident" means a person whose domicile is in the Rosebud Sioux Indian Reservation or the State of South Dakota.

(28) "Non Resident" means persons other than residents as defined in number 27 above.

(29) "Officer" means a Conservation Officer of the Rosebud Sioux Tribal Department of Resources or any other law enforcement officers of the Bureau of Indian Affairs or Rosebud Sioux Tribe.

(30) "Sell" means to offer or possess for sale, barter, exchange or trade or the act of selling, bartering, exchanging or trading.

(31) "Tag" means a card, table, or other identification device issued for the carcass of any game animal.

(32) "Take" means to fish, angle, hunt, pursue, catch, capture, trap, kill or otherwise possess any wildlife or any attempt to commit any of these acts.

(33) "Closed Area" means any area where by authority of the Department of Natural Resources, hunting and trapping is prohibited and to which access or any other activities may be allowed if signs so state in conspicuous places along access routes.

(34) "Specified Areas" means areas where the taking of game animals is restricted to the specifications set forth by rules, regulations, ordinance, or resolution set forth by the Department of Natural Resources in conjunction with the Rosebud Sioux Tribal Council.

(35) "Wildlife" means any form of animal life generally living wild in a state of nature, endowed with sensation and the power of voluntary motion, including all wild mammals, birds, fish, reptiles, amphibians and their eggs, nests, and spawn, and any animals, birds, or fish which are part of a Department program which may be in semi domesticated state.

(36) "Bait" means any food item including but not limited to shelled or unshelled grains, shucked or unshucked grains, beans, alfalfa hay, food supplements, salt, and any other items which entices or attracts game to a particular place.

(37) "Baiting" means the act of putting out, scattering, or in other ways distributing bait for the purposes of attracting and taking any game animal or hunting over bait.

(38) "Snagging" means the use of hook or hooks and line, with or without a pole, to impale or attempt to impale fish in a manner other than by natural feeding behavior by fish.

(39) "All-Terrain Vehicle" means any motorized vehicle designed for or capable of travel over unimproved terrain.

(40) "Recreational Vehicle" means any snowmobile or all-terrain vehicle engaged in off-highway recreational use.

(41) "Snowmobile" means any motorized vehicle designed for travel on snow and/or ice and supported in whole or in part by skis, belts, cleats, runner, or low pressure tires.

(42) "Bait Fish" means any fish or minnow which is used for angling or the capture or taking of fish.

(43) "Live Bait" means the use of any baitfish, amphibian, or any other animal while alive for angling.

(44) "Cold Water Fishery" means any lake, pond, stream, creek or river or any part thereof which is managed for trout, and where the use of live bait and bait fish is prohibited.

(45) "Creel Limit" means the maximum number of any species of fish which may be legally taken per day.

(46) "Trot Line" means any line used for fishing with one or more hooks which is not used with a conventional rod and reel and is left unattended which shall include but not be limited to the terms throw line, set line, limb line or jug line.

(47) "License" means the primary document issued by authority of the Rosebud Sioux Tribe which grants authority to engage in activities covered by the provisions of this Chapter.

(48) "Permit" means a secondary document including stamps, requiring a license as a prerequisite to its issuance, which grants authority to engage in certain specified activities under the provisions of this chapter, within the parameters of Tribal rules and regulations governing these activities.

(49) "Small Game" shall be defined as including the following: Family Anatidae limited to geese, brants, dabbling ducks, diving ducks, tree ducks, sea ducks, and mergansers; Family Rallidae including coots (mudhens) and gallinules (Rails and Soras); Family Charadiidae including plovers and turnstones; Family Scolopacidae including snipe, woodcock, and sandpipers; Gallinaceous Birds with the exception of family Malaegrididae wild turkeys to include family tetraonidae Sharptail grouse and Prairie chicken; Family Phasiandidae Bobwhite Quail, Ringneck Pheasant, and Hungarian Partridge; family Columbidae Mourning Dove; Cotton Rabbit, Eastern Fox Squirrel, Gray Squirrel, and Pine Squirrel.

(50) "Big Game" shall be defined as wild Turkey and any undomesticated clovenhooved ungulate, including whitetail deer, mule deer, antelope, elk and buffalo, for which harvest may be established by the Rosebud Sioux Tribe.

(51) "Unprotected Species" means those species of birds and animals which are not protected under the provisions of this Chapter, and for which, year round hunting is allowed. This shall include the following: Prairie Dog, Jackrabbits, Groundsquirrels, Crows, Purple Grackles, All species of Skunks, Redwing Black Birds, European Startling, Raven, Brewer's Blackbirds and Bronzed Grackles.

(52) "Water Fowl" means any wild geese, brants, or wild ducks.

5-35-2. POWERS AND DUTIES OF THE DEPARTMENT OF NATURAL RESOURCES.

(a) RECOGNITION. There is hereby recognized within the scheme of government of the Rosebud Sioux Tribe the Department

of Natural Resources as has heretofore been established by the Rosebud Sioux Tribal Council.

(b) POLICY AND INTENT. It shall be and is hereby established as the policy and intent of the Department of Game, Fish and Parks, in conjunction with the Rosebud Sioux Tribal Council for establish the following:

(1) To provide adequate and flexible system for the protection and conservation of all forestry, fish and game resources on the Rosebud Sioux Indian Reservation;

(2) To provide for the establishment of rules, regulation and ordinances relating to the harvest of fish, wildlife and timber on the Rosebud Sioux Indian Reservation;

(3) To provide for the general management and supervision of all wildlife, fishery, forestry and outdoor recreational activities on the Rosebud Sioux Indian Reservation;

(4) To provide for the establishment of license requirements, prohibited acts, penalties in regard to wildlife, fishery, forestry, and outdoor recreational activities on the Rosebud Sioux Indian Reservation.

(c) REGULATIONS AND ORDINANCES, CONTENT. The Department of Natural Resources shall, from time to time recommend to the Rosebud Sioux Tribal Council for the adoption, amendment, promulgation, or repeal of such regulations and ordinances, consistent with the policy, objectives and intent of this Chapter as it may deem necessary or desirable in the public interest in carrying out the policy and provisions of this Chapter. Such regulations and ordinances, shall without limiting the general powers herein conferred, include the following:

(1) To 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 be found, after investigation, that such actions necessary either to assure maintenance of an adequate supply thereof, to regular taking, or to effectuate proper game management and control.

(2) To close or open lakes, streams, and refuges or parts therefore to angling, trapping or hunting, and to regulate and prescribe the means by which wildlife may be taken as may be best to perpetuate, restore, increase or control any species of wildlife and assure an adequate supply thereof, and to regulate the transportation and storage of all wildlife or parts thereof within the boundaries of the Rosebud Sioux Indian Reservation and the shipment or

transportation off of the Rosebud Sioux Indian Reservation.

(3) To establish or change bad limits & possession limits.

(4) To establish and change territorial limits for the taking of all species of wildlife.

(5) To prescribe the types of or kinds of bait, lures, tackle, equipment, trap, firearms and weapons, the tagging of game or fish or parts thereof or any other means or devices for taking of such wildlife.

(6) To designate the areas for hunting with bow and arrow and seasons therefore.

(7) To establish big game, small game, fish, and/or furbearing animal refuges, production areas, demonstration areas, and research areas; when private property is to be included in one of the above, written consent of the owner must first be obtained; all boundary lines shall be posted at the usual place of ingress with signs bearing instructions and title of the Department of Natural Resources of the Rosebud Sioux Tribe.

(8) To establish methods for checking hunters, fishermen, trappers into and out of designated areas, to prescribe safety and fire control measures and other regulations as may be deemed necessary in the interest of range, forest, game, fish or furbearing animal management, and for the safety and welfare of hunters, trappers, fishermen, landowners and the Rosebud Sioux Tribe.

(9) To establish fees and license costs for hunting seasons, general, special or otherwise.

(10) To establish rules and regulations governing the operations of boats upon waters located within the exterior boundaries of the Rosebud Sioux Tribe.

(11) To establish rules and regulations governing the operation of snowmobiles and other all-terrain recreational vehicles on the lands of the Rosebud Sioux Tribe, which shall also include aircraft.

(12) To establish guidelines, rules and regulations for the harvest of timber and to supervise such activities in such a way as to perpetuate the timber resources and to provide for sustained yield.

5-35-3. PROCEDURAL RULES.

(a) OFFICER OF DUTIES. It shall be the duty of every Tribal Conservation Officer and Tribal Law Enforcement Officer to enforce the rules, regulations and ordinances promulgated hereunder relating to hunting, fishing, trapping, and all other regulations which may relate to all activities pursuant to the policy and intent of this Chapter and such officers may issue

citations and/or make arrest and bring before the proper court any persons violating the provisions of this Chapter or any of the regulations, ordinances or rules adopted thereto pertaining to the policy intent and purposes of this Chapter.

(b) RELATION TO CRIMINAL PROCEDURES UNDER THE ROSEBUD SIOUX TRIBAL CODE. Unless other wise provided for within in this Chapter the procedural and substantive provisions of the Rosebud Sioux Tribal Code relating to criminal procedure and substantive crime shall apply within this chapter.

(c) SEARCH. Any Officer may search without warrant any conveyance vehicle, game bag, game basket, game coat or any receptacle, for game animals, birds, fish, or any package, box hunting camp or similar place where he has reason to believe contains evidence of violation of this code, regulations, ordinances or rules adopted hereunder pertaining to hunting, fishing or trapping.

(d) AUTHORITY TO ENTER PRIVATE LAND. Any Officer in the course of his duty may enter upon any lands or waters of the Rosebud Sioux Indian Reservation and remain thereon while performing such duties hereunder, and such actions by such Officers shall not constitute trespass.

(e) SEIZURE. Any Officer may upon probable cause, seize without warrant, all birds, animals, or parts thereof taken, killed, transported or possessed, contrary to the provisions of this Chapter or any regulation, rule or ordinance pertaining to hunting, fishing, or trapping, and or gun, trap, net, seine, decoy, bait, boat, light, fishing tackle, or other device unlawfully used in hunting, fishing, or trapping, or held with the intent to unlawfully use for hunting, fishing or trapping.

(f) FORFEITURE PROCEDURE. Any contraband game or fish seized shall be subject to forfeiture at the order of the Tribal Court of the Rosebud Sioux Tribe after notice and opportunity for hearing or trial as herewith set forth. In case it appears upon the sworn complaint of the Officer making the seizure that any articles seized were not in the possession of any person, and that the owner thereof is unknown, the Court shall have the power and jurisdiction to forfeit such articles unknown by publishing such summons in any newspaper or of general circulation for a period of two successive issues. The summons shall describe the articles seized and shall give the owner 15 days from the date of the last publication to

appear before the Tribal Court and contest the forfeiture.

(g) FORFEITURE; DISPOSITION OF PROPERTY. In the event that the Tribal court orders forfeiture of any articles seized, such articles shall be sold at auction with proceeds going to the Department of Natural Resources. If any articles are not declared forfeited by the Order of the Tribal Court, they shall be returned to the person from whom seized, after the completion of the case and the fines and liquidated damages, if any, have been paid. If fines and/or liquidated damages are assessed by the Court and not paid within a period of time to be established by the Court, the Court may dispose of said property as described above.

(h) CIVIL LIABILITY TO THE TRIBE. Upon conviction of an offense where the defendant has illegally taken, killed or possessed any species of fish or wildlife, the defendant shall be liable for liquidated damages. The minimum damages to be paid to the Department of Natural Resources shall be as follows:

BIG GAME	Male	Female
Deer	\$150.00	\$300.00
Antelope	\$150.00	\$300.00
Elk	\$1,500.00	\$1,500.00
Buffalo	\$1,500.00	\$1,500.00
Turkey	\$75.00	\$75.00

SMALL GAME		
Ducks	\$25.00	\$50.00
Geese	\$50.00	\$50.00
Pheasants	\$25.00	\$25.00
Grouse &		
Prairie Chicken	\$20.00	\$20.00
Mourning dove	\$10.00	\$10.00
Hungarian	\$10.00	\$10.00
Partridge	\$10.00	\$10.00
Rabbits	\$10.00	\$10.00

FISH – All fish, regardless of species, will have a value of \$2.00 per inch.

FURBEARERS	Male	Female
Coyote	\$75.00	\$75.00
Fox	\$75.00	\$75.00
Bobcat	\$300.00	\$500.00
Mountain Lion	\$500.00	\$1,000.00
Mink	\$50.00	\$50.00
Raccoon	\$50.00	\$50.00
Weasel	\$30.00	\$30.00
Badger	\$30.00	\$30.00
Porcupine	\$30.00	\$30.00

NONGAME SPECIES – All songbirds (except unprotected species) will have a value of \$15.00

5-35-4. GENERAL LICENSING, HUNTING AND FISHING PROVISIONS.

(a) LICENSE AND PERMIT. License and permit fees for hunting and fishing within the exterior boundaries of that land area wherever situation known as the Rosebud Sioux Indian Reservation shall be established by the Rosebud Sioux Tribal Council by resolution as it deems annually without need to amend this Ordinance.

(b) GENERAL HUNTING LICENSE. The general hunting license is required of every hunter within the exterior boundaries of that land wherever situated known as the Rosebud Sioux Indian Reservation; hunters between the ages of 12 and 15 years inclusive must possess a certificate of competency or a hunters safety card and must be accompanied by a parent, guardian or responsible adult while in the actual acts of hunting; the general hunting license provided for hereunder shall not be issued to anyone under the age of 12.

(c) PERMIT TO HUNT BIG GAME. It shall be unlawful for any person to hunt any big game animal except persons to whom a tribal game permit has been issued.

(d) SMALL GAME PERMIT. The small game permit as provided for herein is required of every hunter who hunts small game, including migratory water fowl.

(e) FISHING LICENSE. It shall be unlawful for any person to take fish, frogs, turtles, or any other form of aquatic life without a valid Tribal fishing license.

(f) HANDICAPPED HUNTERS. Licensed hunters who are paraplegic or otherwise physically unable to walk with or without crutches, braces, or other mechanical support devices in the fields or woods, and who have obtained special permits from the Department, may shoot from a standing vehicle in the course of hunting game animals or game birds.

(g) PROTRUDING GUNS. Except as otherwise provided for herein it shall be unlawful for any gun or firearm to protrude from any motor vehicle or conveyance while on a highway or public road within the exterior boundaries of that land area known as the Rosebud Indian Reservation.

(h) DISTURBING WILDLIFE PROHIBITED. No person shall scare, chase, harass, disperse, rally or otherwise disturb any wildlife by means of other than by legal hunting methods and in the ordinary course of hunting.

(i) SIZE OF PARTY LIMITED. No more than twenty (20) persons shall cooperate as a group in hunting.

(j) HUNTING METHODS RESTRICTED TO SHOULDER GUNS AND BOWS AND ARROWS. No person shall at any time hunt any game bird or game animal in any other manner than by shooting with a gun held to the shoulder or with a bow and arrow with a draw weight of at least twenty pounds and a draw peak of twenty eight inches at the draw peak of draw, except that large caliber handguns of the calibers .41 and .44 caliber may be used in taking of big game animals; all cross bows or various forms thereof shall be illegal.

(k) USE OF RIFLES TO HUNT BIRDS PROHIBITED. The use of rifles in the hunting of game birds is prohibited, except that rifles using center fire cartridges may be used in the hunting of wild turkeys.

(l) USE OF ARTIFICIAL LIGHT IN HUNTING PROHIBITED. No person shall take or attempt to take any game or wild animal with the aid or use of artificial light, except raccoons after they have been treed with the aid of dogs.

(m) HUNTING FROM A MOTOR VEHICLE PROHIBITED. No person while in or on a motor vehicle or any conveyance attached thereto shall take game nor discharge any firearm at any wild animal while on a public highway or in a field of unharvested grain.

(n) HUNTING FROM MOTOR VEHICLE OR SNOWMOBILE UNLAWFUL. It shall be unlawful for any person to chase, drive or harass or hunt any game animal, game bird or any other form of wildlife with or from a motorcycle or snowmobile.

(o) USE OF AIRCRAFT FOR HUNTING PROHIBITED. It shall be unlawful to hunt from an airplane or any form of aircraft within the exterior boundaries of the Rosebud Indian Reservation or any trust land of the Tribe outside of Todd County:

(1) It shall be unlawful to assist in any way hunters on the ground with the aid of an aircraft, to spot game for the purpose of making it less difficult to harvest game, or to disturb, rally, drive, stirrup, or otherwise harass any game or other wildlife species with an airplane;

(2) It shall be unlawful to hunt big game, predators, furbearers, and waterfowl on the same day that one has flown aircraft over, around or through the Rosebud Indian Reservation.

(p) POSSESSION OF UNLAWFULLY TAKEN OR IMPORTED BIRD, ANIMAL OR FISH UNLAWFUL. It shall be unlawful

for any person, at any time, to have in his possession or under his control, any bird, animal, fish, or any part thereof, which has been unlawfully taken on the Rosebud Sioux Indian Reservation, this state or any other state or Indian Reservation which has been unlawfully transported into this reservation.

(q) POSSESSION DURING CLOSED SEASONS AS PRIMA FACIE EVIDENCE OF TAKING DURING CLOSED SEASON.

The possession or having under control by any person of any bird, animal, fish or part thereof at any time when the killing, taking or possession thereof is by the law of the Rosebud Sioux Tribe declared to be unlawful, shall be prima facie evidence that such taking or killing has occurred the closed season.

(r) INSPECTION AND COUNTING OF BIRDS, ANIMALS AND FISH TO BE PERMITTED BY PERSON IN POSSESSION.

Every person having in possession any game, bird, animal or fish or any part thereof, shall upon the request of any person authorized to enforce the game and fish laws of the Rosebud Sioux Tribe, permit the inspection and count of such birds, animals or fish in his possession, and any motor vehicle may be stopped for such inspection and count by any uniformed law enforcement officer.

(s) USE OF CITIZEN BAND RADIOS PROHIBITED. It shall be unlawful to use citizen band radio from either base stations or vehicles to make it easier or less difficult to harvest any form of wildlife on the Rosebud Reservation.

(t) ACCOMPANIED BY UNLICENSED HUNTER. It shall be unlawful for anyone to accompany properly licensed hunters in the field with a bow and arrow or firearm of any type without possessing a valid tribal hunter license and permit for the wildlife species being hunted.

(u) LICENSING, MISREPRESENTATION.

Misrepresentation of identity, age, or residency while purchasing a tribal license or tribal permit shall be unlawful and shall constitute fraud.

(v) TRANSFER/ALTERATION OF LICENSE. Tribal licenses and tribal permits shall be valid only for the person whose name appears on the license and/or permit; further it shall be unlawful to alter or change in any way any tribal license or permit after being issued by the Department or authorized vendor.

(w) DESTRUCTION OF PROPERTY.

No person shall deface, mutilate, shoot at, tear or pull down, or destroy any sign on the Rosebud Indian Reservation, nor shall any person cut, run through, tear out, take down, and leave down, fence, or leave gates open or in any way destroy gates or fence on any lands on the Rosebud Sioux Indian Reservation; in addition to the penalty provided for violating this provision, any person convicted of such a violation may be required by the convicting court to pay for all damages resulting from such violation.

(x) WASTE PROHIBITED. No person shall want only waste or destroy any of the birds, animals, or fish of the kinds protected by the laws of the Rosebud Sioux Tribe.

(y) FINANCE. All revenue taken in by the Department from hunting, fishing, and trapping licenses and permit sales, timber harvest permit, bait vendors license, sale of timber and timber products, sale of any species of wildlife, receipt of liquidated damages and fines from violations of this code will be used to operate the Department and the Department programs to implement the best possible management and practices for tribal natural resources.

(z) PUNISHMENT. Unless otherwise specifically provided for within this Chapter or any subsection thereof, any person convicted hereunder for the acts or omission made unlawful and provided for herein shall be deemed to have committed an offense against the Rosebud Sioux Tribe and the peace and dignity thereof and may be fined in an amount not to exceed \$500.00, and may be sentenced to a period in the Rosebud Sioux Jail facilities for period not to exceed 6 months or both such fine and imprisonment; in addition thereto the civil liabilities as provided for within this Chapter shall be applied as against anyone who is convicted and sentenced and fined hereunder.

5-35-5. BIG GAME PROVISIONS.

(a) BIG GAME TAGGING. The locking seal issued with each big game permit shall be attached securely around one leg between the hoof and knee joint.

(b) GENERAL. No big game animal shall be hunted or harvested by any other method than is prescribed by this Code.

(c) BAITING. It shall be unlawful to use bait of any kind to attract big game animals while hunting or to hunt or take big game over bait.

(d) EVIDENCE OF SEX. After harvesting a big game animal evidence of sex must be left attached to the carcass.

Suitable evidence of sex shall include scrotum, udder, head, or identifiable portions of reproductive organs.

(e) SILENCING. It shall be unlawful to use any mechanism to silence, muffle, or minimize the report of any firearm while hunting big game.

(f) HUNTING FOR ANOTHER. No person shall hire another person to hunt big game for him nor shall any person hunt big game for another with or without any form of compensation.

(g) DISTURBING WILDLIFE PROHIBITED. No person shall scare, chase, harass, disperse, call or otherwise disturb any wildlife by means other than legal hunting methods and in the ordinary course of hunting.

(h) ACCOMPANIMENT PROHIBITED. No big game permittee, while hunting in the field during any big game season shall be accompanied by any non-licensee or non-permittee carrying any firearm or bow and arrow. A "non-licensee" or "non-permittee" is a person not having a big game license for the same season.

(i) MINIMUM CALIBER OR BIG GAME AMMUNITION. It shall be unlawful for any person to hunt any big game animal with a firearm which discharges a projectile of a diameter less than 22/100 of an inch. The cartridge must contain a soft point or expanding bullet.

(j) MINIMUM LENGTH OF BIG GAME AMMUNITION. It shall be unlawful for any person to hunt any big game animal with a cartridge less than two inches in length, except with large Caliber handguns.

(k) LARGE CALIBER HANDGUNS. It shall be unlawful to hunt any species of wildlife on the Rosebud Sioux Reservation with a handgun, except that big game may be hunted with handguns of .41 caliber and .44 caliber using factory loaded ammunition with expanding bullets and with at least a 4 inch barrel. All other calibers of handguns shall be illegal for hunting of big game.

(l) MINIMUM CALIBER OF MUZZLE-LOADING GAME AMMUNITION. It shall be unlawful for any person to hunt big game with any muzzle loading rifle which discharges a projectile of a diameter less than 42/100 of an inch.

(m) MAXIMUM NUMBER OF CARTRIDGES IN SELF-LOADING FIREARMS USED TO HUNT BIG GAME. No self-loading firearm that holds more than

six cartridges may be used to hunt any big game animal.

(n) BUCKSHOT PROHIBITED IN HUNTING BIG GAME. No buckshot may be used, and no single call or rifled slug weighing less than ½ ounce may be used in hunting big game animals.

(o) DOGS PROHIBITED IN HUNTING BIG GAME. No dog shall be used in the hunting of big game animals.

(p) USE OF SALT TO ATTRACT BIG GAME PROHIBITED. No person shall place any salt or salt lick or construct a blind or stand at or near any salt lick for the purpose of hunting big game animals.

(q) USE OF ARTIFICIAL LIGHT IN HUNTING BIG GAME PROHIBITED. It shall be unlawful to use any artificial light in taking or attempting to take big game animals, or to use artificial light in big game areas while in possession of a firearm or bow and arrow.

(r) UNLAWFUL TAKING, POSSESSION, SALE OR TRANSPORTATION OF GAME BIRDS, ANIMALS, OR FISH. Any person who takes, catches, kills, or has in his possession with intent to sell; sells, or causes to be conveyed; has in his possession with intent to ship or convey to any point, either within or without this Reservation, any game birds, animals, or fish or parts thereof, in violation of any law of this Tribe or any legally prescribed pertinent regulations of the Department of Natural Resources, or any common carrier or agent or agents thereof who aids or abets any person in shipping such game animals of fish, or has the same in his possession with intent to ship or convey to any point either within or without this Reservation contrary to law, shall be guilty of a misdemeanor.

(s) ARCHERY EQUIPMENT RESTRICTIONS. No person hunting with bow and arrow shall use or possess explosive points, poisonous points, barbed points, or cross bows.

(t) MINIMUM SIZE OF BOW AND ARROW. Big game permittees hunting with bow and arrow shall be equipped with a bow of not less than forty pounds pull at twenty-eight inches of draw or at peak of draw, capable of shooting an arrow one hundred twenty-five yards. The cutting edge of the arrowhead must be of steel and not be less than 7/8 inches wide and not less than 1½ inches long. The shaft of the arrow must be at least 24 inches long. Broadheads must be

of reasonable sharpness (razor sharp). Each cutting blade of the broadhead must be of one piece, and all broadheads with spiral shaped cutting surfaces are prohibited.

(u) ARCHERS PROHIBITED FROM POSSESSING FIREARMS. No person licensed in season restricted to archery only shall possess any firearm in the field while hunting with bow and arrow.

(v) TAGGING REQUIREMENTS FOR BIG GAME. No big game animal taken on this Reservation shall be transported unless the tag bearing the licensee/permittee's number for that season, has been securely attached at the time the big game animal is brought into any hunting camp, dwelling, farmyard, or other place or abode of any kind occupied overnight or in the event such big game animal is brought out to a road or trail, then before the same is placed upon or in a vehicle of any kind. All tagging instructions printed on the tag must be followed.

5-35-6. FISHING REGULATIONS.

(a) LABELING AND ACCESS TO FISHING HOUSES. Fish houses, shanties, or other shelters must display on the outside the name and address of the owner in letters at least 2 inches high. The door must permit entry at all times except when unoccupied and locked from the outside. All such shelters must be removed from the ice by March 5 or earlier, as determined by the Department.

(b) ICE HOLE SIZE RESTRICTIONS. No hole shall be cut or drilled through the ice or a greater diameter than 12 inches, nor shall the length of any side of the ice hole exceed 12 inches which is used for ice fishing.

(c) REFUSE LEFT ON ICES. It shall be unlawful for any person to deposit any form of organic or inorganic waste on the ice of any water of the Rosebud Sioux Reservation.

(d) FISHING RESTRICTED TO AUTHORIZED METHODS. It shall be unlawful to catch or attempt to catch, take, or kill any fish by any method, except as provided in this Code.

(e) MAXIMUM NUMBER OF LINES AND HOOKS. It shall be unlawful for any person to fish with more than two lines at the same time, and no more than three hooks shall be attached to the same line. Artificial lures constitute one hook, regardless of the number of gang hooks attached.

(f) ROUGH FISH: DEFINITION; CONDITIONS. It is legal to take certain

rough fish by means of bow and arrow. "Rough Fish" means; Paddle fish, carp, buffalo, carpsuckers, suckers, gar, drum, and gizzard shad.

(1) Each bow and arrow shooter shall have in his possession a valid Tribal fishing license.

(2) The minimum weight of bows shall be twenty-five pounds.

(3) The maximum length of arrows shall be thirty-two inches.

(4) Each arrow must have a barbed head.

(5) Each arrow must be shot from a bow.

(6) A line must be attached from bow to arrow.

(7) It shall be unlawful to take fish using a crossbow

(g) ROUGH FISH AREAS; RESTRICTIONS. All streams, lakes, ponds, and other waters in the Rosebud Sioux Reservation are subject to Tribal Games, Fish & Parks Regulations relative to fishing, and are open to the taking of certain rough fish by means of bow and arrow, except that all water areas within a distance of 100 yards of any boat dock, swimming area, picnic area, or other place where people are congregated, are closed to bow and arrow fishing. Bow and arrow fishing is permitted only during daylight hours.

(h) SNAGGING; UNLAWFUL. To catch or take any fish by hand fishing, toe fishing, snagging, or by use of brush lines, jug or float line fishing, or any other similar device; snagging as prohibited by law, shall not include hooking when the fish by its action takes into its mouth a bait or lure. A fish hooked in any manner must be immediately released into the water from which it came if not immediately released, the person hooking the fish shall be guilty of snagging.

(i) SEINES; NETS; SPEARS; TRAPS; UNLAWFUL. It is unlawful for any person to have in his possession any seine trammel net, hook net, gill net, fish gig, fish spear, fish trap; or other device, contrivance or material for the purpose of taking fish, except as otherwise provided for by law.

(j) DELETERIOUS SUBSTANCES; EXPLOSIVE; UNLAWFUL. It is unlawful to place in or upon any waters within the Rosebud Sioux Reservation any deleterious substances, or fish berries, or to place or explode dynamite, giant powder, lime, nitroglycerine or any other explosive of any character or kind in any waters on the Rosebud Sioux Tribe, with the intent to take or kill, stun or wound fish.

(k) RODS, LINES, BAITED HOOKS. It is unlawful to take fish by any other means than by rods, lines and baited fishhooks, except as provided by law.

(l) BAIT MINNOWS.

(a) The taking of the common bait minnow (family Cyprinidae) and top minnows or killifish (family Cyprinodontidae) from streams, rivers, and lakes of the Rosebud Sioux Reservation, for use as bait, is permitted subject to the limitation that possession of such minnows and/or small fish taken in excess of 500 per day is prohibited and declared to be unlawful.

(b) It is lawful to have and use, for the sole purpose of taking minnows for a bait, a minnow seine not more than four feet wide and fifteen feet long with a mesh not larger than one-fourth inch square measure; and a glass or wire minnow trap with throat not larger than one inch in diameter, any other seine or seine of device shall be unlawful.

(c) The taking of bait minnows for resale, trade, or other commercial purpose is prohibited, except as otherwise provided in the Rosebud Sioux Tribal Code.

(m) BAIT VENDORS LICENSES. It shall be unlawful to sell, trade, or barter baitfish on the Rosebud Sioux Reservation without possessing and displaying in a conspicuous place a valid Rosebud Sioux Tribal Bait Vendor's License.

(n) PURCHASE OF LICENSE. The bait Vendor's License may be purchased from the Department of Natural Resources and is valid until December 31 of the year of issuance. The cost of the Bait Vendor's License is determined by the Department of Natural Resources.

(o) GAME FISH, CATFISH, ROUGH FISH AS BAIT UNLAWFUL. It shall be unlawful to sell, trade, or barter game fish, catfish or rough fish as bait, or for any other purpose on the Reservation. No baitfish shall be introduced to any waters of the Reservation for any purpose unless, specifically authorized by the Department.

(p) BAIT FISH IN WATERS UNLAWFUL. It is unlawful to empty the contents of any minnow bucket or otherwise introduce bait minnows or fish of any species into the waters of the Rosebud Sioux Tribe.

(q) BAITFISH IN RESTRICTED WATERS UNLAWFUL. It is unlawful to use bait minnows while fishing in any restricted waters prohibiting the use of bait minnows or any cold water fishery of the Rosebud Sioux Tribe.

(r) FROGS.

(1) A valid Rosebud Fishing license is required for any person to take, catch or kill bullfrogs, except those people exempt by law from having such a license.

(2) Bullfrogs may legally be taken by hand, dip-net, and hook and line. Any and all other means and methods of catching, taking and/or killing bullfrogs are prohibited.

5-35-7. TRAPPING

(a) TRAPPING; MEMBERS, NONMEMBERS. Trapping of furbearers on the Rosebud Reservation is limited to tribal members only, except that non-members farmer/ranchers may trap predators in the course of their farm and ranch operation for animal damage control.

(b) TRAPS; MAKING. All traps will be marked with the owners name and address.

(c) TRAPS; DISTURBING. No one shall disturb in any way another person's trap sets, harass, kill, or take a trapped animal from another person's trap set.

(d) TRAPS TO BE CHECKED. Traps set shall be checked at least once every 48 hours.

(e) TRAPPING AREAS. No traps shall be set within 200 yards of any house, dwelling, community, town, city limits, public use area, picnic area, or other place where public gatherings are likely to take place. No traps shall be set within 200 yards of any Cemetery.

(f) TRAPPING GAME ANIMALS UNLAWFUL. It shall be unlawful to trap any small or big game animals. Only furbearers, predators, and unprotected species may be legally trapped.

(g) TRAPPING ON PRIVATE LAND. If trapping is to take place on leased land, the lesser must be notified prior to setting traps.

(h) TRAPPING PROTECTED SPECIES. If protected species are trapped, the animal shall be left undisturbed and the Department of Natural Resources notified.

(i) STEEL LEGHOLD. No steel leghold traps larger than 14 are permitted.

(j) HARVESTING BOBCATS; TAGGING. Bobcats may be harvested between December 16 and January 15 and upon harvesting a bobcat the unskinned carcass must be presented to a Conservation Officer for inspection and tagging. Bobcats shall not be sold without being tagged by a Conservation Officer.

(k) POSSESSION OF PREDATOR, FURBEARER. No predator or furbearer shall be held in possession by anyone while

in a living state, except that one furbearer may be kept as a pet under humane conditions.

(i) PHYSICAL ALTERATION OR WILD PREDATOR OR FURBEARER. No wild predator or furbearer which it to be kept as a pet shall physically altered in any way. This shall include declawing, defanging, descending, spaying, or any other intentional physical alteration.

(m) NUMBER OF PREDATOR OR FURBEARER; PETS. No wildlife species other than one predator or furbearer may be kept as a pet or held in possession by anyone while in a living state.

5-35-8. FORESTRY.

(a) OWNERSHIP. All timber resources on the Rosebud Indian Reservation are owned by the Tribe, except for tree claims and other tree stands located on private lands within the Reservation.

(b) MANAGEMENT. The management and control of all tribal timer resources is delegated to the Rosebud Sioux Tribal Department of Natural Resources and the Natural Resources Committee.

(c) SALES. The sale of timber and timber products from tribal timber stands is under the control of the Rosebud Sioux Tribal Department of Natural Resources and the Natural Resources Committee.

(d) TIMBER RESERVE ACTIVITIES. All harvest, collection of firewood vehicular travel, and recreational activities within the Rosebud Sioux Tribe Timber Reserve is under the control of the Department of Natural Resources.

(e) TIMBER HARVEST REGULATED.

(1) All harvest products will require supervision by the Natural Resources Department, based upon prior contract in the form of "Timber Harvest Permit", and issued by the Natural Resources Department. Validity requires Concurrence by the Bureau of Indian Affairs.

(2) A schedule of stumpage fees will apply as set by the Tribal Council from time to time.

- (a) Dry Wood
- (b) Live Trees
 - I. Public Use
 - II. Personal Use
 - 1. Post & hole
 - 2. House logs
 - 3. Christmas trees
 - 4. Ornamental stock
 - 5. Seedlings
 - 6. Firewood

(3) Monies collected will be credited to the Natural Resources Department with the stipulation that they support Forest management/conservation practices.

(f) TREES. All live trees to be cut will be so designated prior to harvest, with a paint type mark applied by the sale supervisor.

(g) STUMPS. Stumps shall be cut as low as practicable to avoid waste. The means height of any stump shall not exceed one-half its diameter except that where this height is considered to be impracticable, higher stumps may be authorized by an authorized official of the Department of Natural Resources.

(h) SLASH. Slash disposal shall require that where practical limbs and other refuse shall be piled for future burning (with snow cover). Where not practical to pile, slash must be cut down low to ground surface and not to exceed eighteen (18) inches in height.

(i) TRAILS AND ROADS. Skidding trails and hard roads will be designated by the sale supervisor to minimize the soil erosion hazard.

(j) PERMITS; EXTENSIONS. Timber harvest permits shall specify the time period limitations of the sale. Extensions will be permitted only in the event that weather and/or moisture conditions are unacceptable from the standpoint of operations or resources damage susceptibility.

(k) CUTTING WITHOUT PERMIT; UNLAWFUL. It shall be unlawful to cut, dig, or in any other way remove living trees from Tribal lands for any purpose without possessing a valid timber harvest permit issued by the Department of Natural Resources.

(l) CUTTING AREAS AND TIME; UNLAWFUL. It shall be unlawful to cut, dig, or in any other way removed living trees from tribal lands other than those trees designated for removal by the Department, and within the areas or areas designated for harvest, and only during the time frame established by the Department, as shown on the Timber Harvest Permit.

(m) DAMAGE; WASTE; UNLAWFUL. It shall be unlawful to harvest trees in a careless manner, which could cause damage to adjacent trees or property, or to wantonly damage or destroy living trees or to limb living trees for any purpose, unless authorized by the Department.

(n) SALE WITHOUT AUTHORIZATION; UNLAWFUL. It shall be unlawful to sell, barter, or trade any timber or timber harvest products taken from tribal

lands unless such sale is authorized by the Department, and the operation is part of a program authorized by the Department.

(o) REMOVAL FROM PROGRAM

AREAS; UNLAWFUL. It shall be unlawful to remove any trees, parts thereof, or timber harvest products from a work area in which a Department approved timber management program is occurring/has occurred, without the consent of the Department.

(p) VEHICLES OFF ESTABLISHED

ROADS; UNLAWFUL. It shall be unlawful to drive any motor vehicle off of established roads or fire trails in the timber reserve, unless specifically authorized, by the Department.

(q) FIREFIGHTING. Any Timber Harvest Permittee will assist Tribal or BIA Officers to fight fire during the period of this permit without pay if the area covered by this permit is on fire or threatened, otherwise at the prevailing rate of pay.

(r) FIRES. No fires are allowed in the Timber Reserve except at designated campsites. Fires may be further restricted by the Department and the public will be notified by signs posted along access routes to camping areas and through the media.

5-35-9. RECREATION.

(a) LICENSING. Every boat propelled by a motor on waters located within the boundaries of the Rosebud Reservation shall be numbered and licensed as prescribed by Tribal Law.

(b) LIGHTS. All boats afloat after dark must be equipped with running lights attached to bow and stern and these lights must be in use during hours of darkness.

(c) LIFE PRESERVERS. All motorboats must be equipped with Coast Guard approved life preservers. One life preserver is required for every occupant.

(d) FIRE EXTINGUISHERS. Every boat propelled by a motor to ten horsepower and greater must be equipped with a Coast Guard approved fire extinguisher.

(e) SAFE OPERATIONS. No motorboat shall be operated in such a way as to endanger the lives of others or to cause nuisance or destruction of property.

(f) WATERSKIING. No waterskiing shall take place within 100 yards of any swimming areas. If buoy markers are used to designate such areas, all waterskiing shall take place outside of these buoys.

(g) OARS REQUIRED. All motorboats shall be equipped with a set of oars.

(h) WASTE. No bilge or any other organic or inorganic waste shall be pumped or in such a way introduced to the waters of the Reservation.

(i) WILDLIFE TAKING FROM MOTORBOATS. Motorboats while underway with of a motor shall not be used in the taking of any wildlife on the Reservation.

(j) REPORTS OF CAPSIZING OR SINKING. The capsizing or sinking of any boat shall be reported to the Department of Natural Resources within 24 hours.

**CHAPTER 36 – ROSEBUD TRIBAL
PESTICIDE CODE**

5-36-1.	Definitions for purposes of this code
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5-36-1. DEFINITIONS FOR PURPOSES OF THIS CODE.

A. The term "Administrator" means the administrator of the Environmental Protection Agency.

B. The term "Agricultural Commodity" means any plant or part thereof, or animal, or animal products, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturalists, floriculturalists, orchardists, foresters or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

C. The term "animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

D. Applicators:

(1) The term “certified applicator” means any individual who is certified by the Rosebud Natural Resources/Land Management Committee as authorized to use or supervise the use of any pesticide which is classified for restricted use.

(2) The term “private applicator” means a certified applicator who uses or supervises the use of any pesticide which is classified.

(3) The term “commercial applicator” means a certified applicator (whether or not he is a private applicator which respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or, on any property other than as provided by paragraph 2.

(4) Unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied “under the direct supervision of a certified applicator) if it is applied by a competent person acting under the instructions and control of a certified applicator who is available and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

E. The term “code” means the Rosebud Tribal Pesticide Code.

F. The term “Committee” means the Rosebud Natural Resources/Land Management Committee or that body delegated this authority by the Rosebud Sioux Tribe.

G. The term “Council” means the Rosebud Sioux Tribal Council.

H. The term “EPA” means the U.S. Environmental Protection Agency.

I. The term “District Court” means a United States district court.

J. The term “Environment” includes water, air, land, and all plants and man and other animals living therein and the inter-relationships which exist among these.

K. The term “FIFRA” means the Federal Inspection, Fungicide and Rodenticide Act, as Amended (1972, 1975, and 1978).

L. The term “insect” means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually having more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

M. Label and Labeling:

(1) The term “Label” means the written, printed or graphic matter on or attached to,

the pesticide or device or any of its containers or wrappers.

(2) The term “Labeling” means all labels and all other written, printed, or graphic matter:

(a) Accompanying the pesticide or device at any time; or

(b) To which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Department of Agriculture and Interior, the Department of Health, Education and Welfare, State experiment stations, State institutions or agencies authorized by law to conduct research in the field of pesticides.

N. The term “Land” means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivance, and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

O. The term “pest” means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or inliving man or other living animals) which the Administrator declares to be a pest under Section 25 (c) (1) of FIFRA or which the Committee declares to be a pest.

P. The term “Pesticide” means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended to use as a plant regulator, defoliant, or desiccant: Provided, that the term “Pesticide” shall not include any article (1) (a) that is a “new animal drug” within the meaning of Section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w), or (b) that has been determined by the Secretary of Health, Education, and Welfare not be a new animal drug by a regulation establishing conditions of use for the article, or (2) that is an animal feed within the meaning of Section 201 (x) of such Act (21 U.S.C. 321(x) bearing or containing an article covered by clause (1) of this provision.

Q. The term “Protect Health and the Environment” and “Protection of Health and the Environment” mean protection against any reasonable adverse effects on the environment.

R. The term “Reservation Lands” means all lands within the exterior boundaries of the Rosebud Sioux Indian Reservation, Todd County, South Dakota, and all Trust Lands in Tripp, Mellette, Lyman, and Gregory

Counties, South Dakota, which are within the original boundaries of the Rosebud Sioux Indian Reservation.

S. The term "Restricted use Pesticide" means any pesticide use classified for restricted use by the Rosebud Natural Resources/Land Management Committee, the Secretary of the South Dakota Department of Agriculture, or the Administrator of the U.S. Environmental Protection Agency.

T. The term "Secretary" means the secretary of the South Dakota State Department of Agriculture.

U. The term "State" means the State of South Dakota.

V. The term "Unreasonable adverse effects on the Environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

W. The term "Weed" means any plant which grows where not wanted.

X. The term "Wildlife" means all living things that are neither human, domesticated, nor as defined in this Code, pests, including but not limited to mammals, birds, and aquatic life.

Y. The term "Establishment" means any place where a pesticide or device or active ingredient use in producing a pesticide is produced, or held, for distribution or sale.

Z. The term "To use any registered pesticide in manner inconsistent with its labeling" means to use any registered pesticide in a manner included (1) applying pesticide at any dosage, concentration, or frequency less than that specified on the labeling; (2) applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling, unless the Administrator has required that the labeling specifically states that the pesticide may be used only for the pests specified on the labeling after the Administrator has determined that the use of the pesticide against other pests would cause an unreasonable adverse effect on the environment; (3) employing any method of application not prohibited by the labeling; or (4) mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling. Provided further, that the term also shall not include any use of a pesticide in conformance with Section 5, 18, or 24 of FIFRA, or any use of a pesticide in a manner that the Administrator determines to be consistent with the purpose of FIFRA: and provided further, that after March 31, 1979, the term shall not include the use of pesticide

or after that date the Administrator issues a regulation or advisory opinion consistent with the study provided for it in Section 27 (B) of the Federal Pesticide Act of 1978, which regulation or advisory opinion specifically requires the use of definite amounts of dilution.

5-36-2. CLASSIFICATION OF

PESTICIDES. The Rosebud Sioux Tribal Council or its designated agent shall recognize all pesticide products introduced on the Rosebud Reservation for "restricted use" or "general use" according to the standards consistent with Section 3 of FIFRA. As a minimum, the council will consider all pesticide products classified for restricted use by the Administrator of EPA as for restricted use on the Rosebud Reservation. In addition, the Council may restrict the use of additional pesticide products if the uses be restricted to prevent damages to property other than the property to which they are directly applied or to persons, animals, crops or vegetation other than the pests which they are intended to destroy.

Individuals not appropriately certified from using restricted use pesticides, with the exception of those individuals applying the pesticide under the direct supervision of a certified applicator, as shown in 5-36-1 D (4) of this code.

5-36-3. CLASSIFICATION OF PESTICIDE

APPLICATORS. Pesticide applicators shall be classified as commercial applicators or private applicators according to the definitions shown in 5-36-1 D of this code.

5-36-4. CATEGORIZATION OF COMMERCIAL APPLICATORS.

Commercial applicators shall be classified as commercial applicators or private applicators according to the definition shown in 5-36-1 D of this code.

A. Categories.

(1) Agricultural Pest Control:

(a) Plant. This category includes commercial applicators using or supervising the use of restricted use pesticides in production of agricultural crops, including without limiting the foregoing, tobacco, peanuts, cotton, feed grains, soybeans and forage; vegetables, small fruit, tree fruits and nuts, as well as on grasslands and non-crop agricultural land.

(b) Animal. This category commercial applicators using or supervising the use of restricted use pesticides on

animals, including without limiting the foregoing, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry and livestock, and to places on or in which animals are confined.

Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.

(2) Forest Pest Control. This category includes commercial applicators using or supervising the use of restricted use pesticides in forests, forest nurseries, and forest seed producing areas.

(3) Ornamental and Turf Pest Control. This category includes commercial applicators using or supervising the use of restricted use pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers and turf.

(4) Seed Treatment. This category includes commercial applicators using or supervising the use of restricted use pesticides on seeds.

(5) Aquatic Pest Control. This category included commercial applicators using or supervising the use of any restricted use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in category 8 below.

(6) Right-of-Way Pest Control. This category includes commercial applicators using or supervising the use of restricted use pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way or other similar areas.

(7) Industrial, Institutional, Structural and Health Related Pest Control. This category includes commercial applicators using or supervising the use of restricted use pesticides in, on, or around food handling establishments, human dwellings, institutions, such as schools and hospitals, industrial establishments, including warehouses and grain elevators, and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products.

(8) Public Health Pest Control. This category includes State, Federal, Tribal or other government employee, using or supervising the use of restricted use pesticides in public health programs for the management and control of pests having medical and public health importance.

(9) Regulatory Pest Control. This category includes State, Federal, Tribal or governmental employees who use or supervise the use of restricted use pesticides in the control of regulated pests.

(10) Research and Demonstration Pest Control. This category includes: (1) individuals who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration, and (2) persons conducting field research with pesticides, and in doing so, use or supervising the use of restricted use pesticides.

Includes in the first group are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs.

The second group includes; State, Federal, Tribal, Commercial and other persons conducting field research on or utilizing restricted use pesticides.

(11) Rodent, Predator, and Bird Pest Control. This category includes commercial applicators using or supervising the use of any restricted use pesticides in the control of rodents, predators, or birds. All commercial applicators are further subcategories according to the types of pesticides they apply, these subcategories are:

(a) Herbicides, desiccants, defoliant, and plant regulators.

(b) Insecticides, attractants, and repellents.

(c) Picicides.

(d) Rodenticides, predacides, and avicides.

(e) Fungicides and nematicides.

(f) Disinfectants and germicides.

All federal applicators who apply pesticides via aircraft must comply with all applicable Federal regulations administered by the State of South Dakota and special provisions set forth by the Committee.

5-36-5. STANDARDS OF COMPETENCY FOR CERTIFICATION.

A. General Standards for Commercial Applicators. All commercial applicators, shall demonstrate knowledge of the following subjects:

(1) Label & Labeling Comprehension

(a) All certified applicators should be required to be familiar with the Tribal Pesticide Code.

(b) The general format and terminology of pesticide labels and labeling.

(c) The understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels.

(d) Classification of the product, general or restricted; and

(e) Necessity for use consistent with the label.

(f) Each applicator will be given a copy of the code before he/she is certified.

(2) Safety-Factors including:

(a) Pesticide toxicity and hazard to man and common exposure routes;

(b) Common types and causes of pesticide accidents;

(c) Precautions necessary to guard against injury to applicators;

(d) Need for and use of protective clothing and equipment;

(e) Symptoms of pesticide poisoning;

(f) First aid and other procedures to be followed in case of pesticide accident; and

(g) Proper identification, storage, transport, handling, mixing procedures and disposal, methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

(3) Environment-The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:

(a) Weather and other climatic by such factors as;

(b) Types of terrain, soil, or other substrate;

(c) Presence of fish, wildlife, and other non-target organisms; and

(d) Drainage patterns.

(4) Pests-Factors such as:

(a) Common features of pest organisms and characteristics of damages needed for pest recognition;

(b) Recognition of relevant pests; and

(c) Pest development and biology as it may be relevant to problem identification and control.

(5) Pesticides-Factors such as:

(a) Types of pesticides;

(b) Types of formulations;

(c) Compatibility, synergism, persistence and animal and plant toxicity of the formulation;

(d) Hazards and residues associated with use;

(e) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and

(f) Dilution procedures.

(6) Equipment-Factors including:

(a) Types of equipment and advantage and limitations of each type; and

(b) Uses, maintenance and calibration.

(7) Application Techniques-Factors including:

(a) Methods of procedure used to apply various formulations of pesticides, solutions, and gasses, together with a knowledge of which technique of application to use in a given situation.

(8) Laws and Regulations. Applicable State, Federal, and Tribal Laws and Regulations.

B. Category Specific Standards.

(1) Agricultural Pest Control

(a) Plants. Applicators must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environment contamination, non-target injury and community problems resulting for the use of restricted use pesticides in agricultural areas.

(b) Animal. Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since most animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress, and extent of treatment.

(2) Forest Pest Control. Applicators shall demonstrate practical knowledge of the types of forests, forest nurseries, and seed production in their State and on the Reservation, and the pests involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment

must be demonstrated especially as it may relate to meteorological factors and adjacent land use.

(3) Ornamental and Turf Pest Control. Applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards of humans, pets, and other domestic animals.

(4) Seed Treatment. Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting, and mixing, and misuse of treated seeds such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seed.

(5) Aquatic Pest Control. Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faculty applications restricted use pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.

(6) Right-of-Way Pest Control. Applicators shall demonstrate practical knowledge of a wide variety of environments since right-of-ways can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way areas, and the impact of their application activities in the adjacent areas and communities.

(7) Industrial, Institutional, Structural and Health-Related Pest Control.

Applicators must demonstrate a practical knowledge of a wide variety of pests including their life cycles, types of formulations appropriate for their control and methods of application that avoid contamination of food, damage and contamination of habitat and exposure to people and pets. Since human exposure, including babies, children, pregnant women, and elderly people, is frequently a potential problem applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because health-related pest control may involve outdoor applications, applications must also determine practical knowledge of environmental conditions particularly related to this activity.

(8) Public Health Pest Control. Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage.

(9) Regulatory Pest Control. Applicators shall demonstrate practical knowledge of regulated pests applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, and spread and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests, and where individual judgments must be made in new situations.

(10) Research and Demonstration Pest Control. Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many

different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pest, and population levels occurring in each demonstration situation is required. Further, they should demonstrate and understanding of pesticide organism interaction and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all the standards detailed in Section 171.4(b) of FIFRA regulations. In addition, they shall meet the specific standards required for categories (1) through (7) of this section as may be applicable to their particular activity.

Persons conducting field research or method improvement work with restricted use pesticides should be expected to know the general standards detailed in 5-36-5A of this Code. In addition, they shall be expected to know the specific standards required for categories 1 through 9 and 11 of this section, applicable to their particular activity or alternately, to meet the more inclusive requirements listed under "Demonstration".

(11) Rodents, Predator, and Bird Pest Control. Applicators must demonstrate a practical working knowledge of both the biological and behavioral patterns of target species and related non-target species. The importance of such knowledge is extreme in controlling rodents, predators, and birds, considering that in a rural environment many species of related non-target wildlife may occur in addition to target species. A practical knowledge of the toxicity of specific pesticides is required also because of the possibility of the carcass of the controlled species being consumed by non-target species.

C. Exemptions from Standards. The above standards do not apply to the following persons for purposes of this Code:

(1) Persons conducting laboratory type research involving restricting use pesticides; and

(2) Doctors of medicine and Doctors of Veterinary Medicine applying pesticides as drugs or medicine during the course of their normal practice.

D. Standards of Competency for Private Applicators. All Private applicators shall demonstrate knowledge of the following subjects:

(1) All certified applicators should be required to be familiar with the Tribal Pesticide Code.

(2) Recognize common pests to be controlled and damage caused by them.

(3) Read and understand the label and labeling information-including the common name of pesticide he applied; pest(s) to be controlled; timing and methods of application; safety precautions; any preharvest or re-entry restrictions; and any specific disposal procedures.

(4) Apply pesticides in accordance with label instructions and warnings, including the ability under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.

(5) Recognize local environmental situations that must be considered during application to avoid contamination.

(6) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

(7) Each applicator applicant will be given a copy of the code before he/she is certified.

E. Standards for Supervision of Non-Certified Applicators by Certified Private and Commercial Applicators.

Certified applicators whose activities indicate a supervisory role must demonstrate a practical knowledge of Federal, State, and Tribal supervisory requirements, including labeling, regarding the application of restricted use pesticides by non-certified applicators.

The availability of the certified applicator must be directly related to the hazard of the situation. In many situations, where the certified applicator is not required to be physically present, "direct supervision" shall include verifiable instruction to the competent person, as follows: (1) detailed guidance for applying the pesticide property, and (2) provisions for contacting the certified applicator in the event he is needed. In other situations as required in the event he is needed. In other situations as required by the label, the actual physical presence of a certified applicator may be required when application is made by a non-certified applicator.

5-36-6. CERTIFICATION PROCEDURES.

A. Commercial Applicators.

(1) Certification Document Required. No person shall apply restricted use pesticides on the Rosebud Sioux Indian Reservation lands without first obtaining a Rosebud certification document from the Rosebud Natural Resources/Land Management Committee. Rosebud tribal

certification is obtained by presenting to the Committee a valid commercial applicator certification document issued by the State of South Dakota. The tribal certification document issued will reflect tribal certification only in the commercial applicator categories appearing on the State certification document presented, which the Committee determines to meet the competency standards given in Section 5-36-5 (b) of this Code. Further, the expiration date on the Rosebud certification document presented.

(2) **Certification Renewal.** A Rosebud certification may be renewed according to the procedures described in Section 5-36-6 (1) of this Code by presenting a valid State of South Dakota certification document to the Rosebud Natural Resources/Land Management Committee.

(3) **Records Maintained.** Commercial applicators shall keep and maintain records of each application of any pesticide to include the following information:

- (a) Name and address of owner of property treated;
- (b) Location of treatment site, if different from (a);
- (c) Date and time application;
- (d) Wind direction, wind velocity, and temperature at time of application (non-structural applications);
- (e) Name of pesticide, formulation, concentration, rate applied, and total amount used;
- (f) Purpose of application (name of pest treated);
- (g) Specific crop or designated area to which pesticides application was made; and
- (h) Name and address of applicator.

Such reports shall be kept for a period of three years from the date of application of the pesticide and shall be available for inspection by the Rosebud Natural Resources/Land Management Committee at reasonable times. The Committee shall upon written request, be furnished a copy of such records by the commercial applicator. Records of restricted use pesticide applicators performed by persons under the direct supervision of a certified commercial applicator shall be the responsibility of the supervising certified applicator.

B. Private Applicators.

(1) **Certification Required.** No applicator as defined in Section 5-36-1 D (1) of this Code shall use or supervise the use of any restricted use pesticide without a private applicator's certificate issued by the

Rosebud Natural Resources/Land Management Committee.

(2) **Certification Methods.** A private applicator may become certified to purchase an/or apply restricted use pesticides on the Rosebud Reservation Lands by presenting a current valid South Dakota Private Applicators certification to the Rosebud Natural Resources/Land Management Committee. The Committee will issue a Rosebud Tribal Certification document to the holder of a South Dakota certification document. The expiration date of the tribal certification will be the same as that given on the South Dakota document. Recertification may be obtained by presenting an updated South Dakota certification document to the Committee.

C. Certification of Non-English Speaking Applicators. Since pesticide labels are printed in English, persons who cannot read English cannot be certified on the Rosebud Reservation.

5-36-7. STORAGE AND DISPOSAL OF PESTICIDES AND PESTICIDE

CONTAINERS. No person shall transport, store, or dispose of any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects, or to pollute any waterway in a manner harmful to any wildlife or aquatic organisms therein.

5-36-8. UNLAWFUL ACTS. Any person who has committed any of the following acts is subject to penalties provided in Section 5-36-10 of this Code:

- A. Made false or fraudulent claims through any media, misrepresenting the effect of pesticide or methods to be utilized;
- B. Made a pesticide recommendation or application inconsistent with the labeling registered with EPA, the Secretary of South Dakota Department of Agriculture, or the Department of Natural Resources/Land Management Committee, for that pesticide, or in violation of EPA's, the Secretary's, or the Committee's restrictions on the use of that pesticide;
- C. Operate faulty or unsafe pesticide application equipment;
- D. Operate pesticide equipment in a faulty, careless, or negligent manner;
- E. Neglected, or after notice, refused to comply with the provision of this Code or to any lawful order of the Committee;
- F. Refused or neglected to keep and maintain the records required by this Code or to make reports when and as required;

G. Made false or fraudulent records, invoices, or reports;

H. Used, or supervised the use of a pesticide which is restricted to use by "certified applicators" without having qualified as a certified applicator; or without working under the direct supervision of a certified applicator as described in Section 5-36-5 (E) of this Code;

I. Used fraud or misrepresentation in making applications for or renewal of certification.

J. Refusal or neglected to comply with any limitations or restrictions on or in a duly issued certification;

K. Used or caused to be used any pesticide in manner inconsistent with its labeling or codes by the Committee if these codes further restrict the uses provided on the labeling;

L. Aided or abetted a certified or uncertified person to evade the provisions of this Code; conspired with a certified or an uncertified person to evade the provisions of this code; or allowed one's certification to be used by another person;

M. Made false or misleading statements during an inspection concerning any infestation or infection of pests found on land;

N. Impersonated any Federal, State, County, Tribal or other governmental official;

O. Distributed any pesticide labeled for restricted use to any person unless such person or his agent has a valid certification to use, supervise the use of, or distribute, restricted use pesticides;

P. Manufactured any restricted use pesticides or distributed any improperly labeled or unlabeled restricted use pesticides;

Q. Applied pesticides onto any land without consent of the owner or person in possession thereof; except, for governmental agencies which must abate a public health problem; or

R. Applied pesticides known to be harmful to honeybees on blossoming crops on which bees are working during the period between two hours after sunrise and two hours before sunset; except, on property owned or operated by the applicator.

5-36-9. DENIAL, SUSPENSION, REVOCATION, OR MODIFICATION OR CERTIFICATION.

A. The Natural Resources/Land Management Committee, or its designated agent, may, for good cause shown or upon its own information and belief, informally contact any applicator about possible

violations of the Code or practices which may result in violations. These informal contacts are to assist the applicator in adhering to practices which promote the proper use of pesticides.

B. Upon recommendations to the Committee by its designated agent, or, based upon its own feelings and belief, the Committee may issue a Warning of Possible Violation in the form of a letter from the Committee to an applicator. The letter will explain the basis for the Warning, and an explanation of the steps that the Committee may take if the applicator does not take positive corrective action.

C. The Committee may suspend, pending inquiry, for not longer than ten days; and, after opportunity for a hearing, may deny, revoke, or modify; any certification issued under this Code if the Committee finds that the applicant or the holder of a certification has been convicted or is subject to a final order imposing a criminal or civil penalty pursuant to Section 14 of FIFRA, or has committed any of the unlawful acts listed in Section 5-36-8 of this Code; provided, that any person requiring certification under this Code shall be subject to the penalties provided for by Section 5-36-10 of this Code.

5-36-10. PENALTIES.

A. Any person violating any provision of this Code may be assessed a civil penalty not to exceed \$500.00 per violation. In determining the amount of the penalty, the Tribal Court shall consider the appropriateness of such penalty to the size of business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation.

5-36-11. DELEGATION OF AUTHORITY.

Any authority vested in the Committee by this Code may with equal force and effect be delegated to such Tribal Officials as the Committee may designate.

5-36-12. ENTRY AND INSPECTION.

For purposes of carrying out this Code, the Natural Resources/Land Management Committee for its designated agent may enter public or private premises at reasonable times by permission or warrant for sampling, inspection, and observational purposes.

5-36-13. COOPERATION. The Tribal Council, Tribal Chairman, or their designee is authorized to cooperate with an enter into agreements with and accept grants-in-aid

from any agency of the State of South Dakota, Indian Tribal Authority, or the United States Government for the purposes of carrying out the provisions of this Code.

5-36-14. SEVERABILITY. If any provision of this Code is found to be invalid in any Tribal or Federal Court proceedings, the Court's decision will apply only to that provision found to be invalid, leaving the remainder of this Code intact.

CHAPTER 37 – ELDERLY ABUSE

5-37-1.	Terms used
5-37-2.	Caretaker
5-37-3.	Person knowing of abuse
5-37-4.	Person immune from giving report or testimony
5-37-5.	Services provided by E.P.T.
5-37-6.	Central Registry
5-37-7.	Confidentiality
5-37-8.	Giving consent for services
5-37-9.	Confidential relation privilege
5-37-10.	Intentional abuse
5-37-11.	Negligent abuse

5-37-1. TERMS USED IN THIS ACT, UNLESS A DIFFERENT MEANING IS CLEARLY INDICATED BY THE CONTEXT MEAN.

(1) "Disabled adult" any person 18 years of age or over who is incapacitated due to a physical or mental disability or due to age, who is found to be in a situation or condition whereby he is unable to protect his own interest or where he faces abuse or attempts to cause abuse by a caretaker, or who is suffering from neglect, or who is exploited by his caretaker, or any other individual.

(2) "Abuse", any willful or negligent act which results in physical injury or pain or mental anguish or injury, sexual abuse, unreasonable confinement, malnutrition, or the deprivation by a caretaker of goods and services necessary to avoid physical harm or mental anguish, or other maltreatment or exploitation.

(3) "Mental anguish or injury", willingly subjecting a disabled adult to fear, agitation, confusion, severe depression, or other forms of serious emotional distress, through threats, harassment, or other forms of intimidating behavior.

(4) "Neglect", the caretaker's failure to provide adequate shelter, food, clothing, or medical services to a disabled adult.

(5) "Caretaker", an individual or public institution who has assumed the

responsibility for the care of a person either voluntarily, by contact, by receipt of payment for care, as the result of family relationship or by order of a court.

(6) "Exploitation", illegal or improper utilization of a disabled person or their resources for monetary or personal benefit, profit or gain.

(7) "Goods and services necessary to avoid physical harm or mental anguish", includes but is limited to provision of medical care for physical and mental health needs assistance in person hygiene, providing adequate clothing, providing adequate shelter with heat and ventilation, protection from health and safety hazards, protection from malnutrition, and transportation necessary to secure these needs.

(8) "Elderly Protection Team (E.P.T.)", a resource group of Professional comprised of representatives from those agencies whose goals include serving the elderly population of the Rosebud Reservation. The function of the E.P.T. is as outlined in sections 3, 5, 6, and 8 of this Chapter.

5-37-2. Notwithstanding any other provisions of this Chapter, no caretaker who in good faith is providing treatment to a person solely by spiritual means through prayer in accordance with the tenets and practices of a recognized group through a duly accredited practitioner shall for the reason alone be considered to have abused or neglected that person under this Chapter.

5-37-3. Any person knowing or having reasonable cause to suspect that a disabled adult is or has been abused other than by accidental means shall report such abuse to the Elderly Protection Team or to the appropriate law enforcement agency. If the report is made to a law enforcement agency, the agency shall immediately notify the E.P.T. The report must be in writing and shall contain the name, age, and address of the disabled adult, the name and address of the alleged perpetrator, the nature and extent of the abuse, and any other pertinent information known to the person making the report. Any person who intentionally fails to make a report required by this section will share liability.

5-37-4. Any person who in good faith makes any report pursuant to this Chapter or who testifies in any judicial proceedings arising from such report shall be immune from civil or criminal liability because of such report or testimony.

5-37-5. Upon receiving a report of abuse of a disabled adult, the E.P.T. shall make a prompt and thorough investigation to determine if such abuse exists and whether the disabled adult is in need of protection services. Services provided to abused disabled adults by the E.P.T. may include:

- (1) Identification of the disabled adult and provisions of services from the Emergency Protection Team;
- (2) Evaluation and diagnosis of the needs of the disabled adults;
- (3) Assistance in locating and receiving alternative living arrangements as necessary;
- (4) Assistance in locating and receiving necessary protection services;
- (5) The coordination and cooperation of other agencies to provide for the needs of the disabled adult; and
- (6) Referral of the alleged abuse to the Tribal Prosecutor.

5-37-6. The E.P.T. shall establish a central registry for reports of and conviction of abuse of disabled person. The information in the central registry shall be confidential and may be released only to the E.P.T.

5-37-7. All records, files, and information concerning disabled adult abuse reports are confidential, and no disclosure or release of such information shall be made except as authorized Section Six (6) of this Act. Any person who knowingly violates the confidential nature of such records, files, and information shall be criminally liable.

5-37-8. The Emergency Protection Team shall provide no services to an abused disabled adult unless the adult gives consent. If the abused, disabled adult is incapable of giving consent due to legal disability or incompetency, and the caretaker of the disabled adult refuses to provide the necessary service or to allow the E.P.T. to provide the service, the E.P.T. may petition Tribal Court to assume guardianship.

5-37-9. The confidential relation privilege may not be claimed in any judicial proceedings involving abuse of a disabled adult.

5-37-10. Any person who intentionally abuses a disabled person in a manner which does not constitute aggravated assault is **guilty of abuse and neglect**, as defined in Section 1 of this Chapter, and the penalty shall be \$500.00 fine and/or 6 months in jail.

5-37-11. Any person who negligently abuses a disabled person in a manner which does not constitute simple assault is **guilty of abuse and neglect** as defined in Section 1 of this Chapter, and the penalty shall be a **\$500.00 fine and 60 days in jail.**

CHAPTER 38 – DOMESTIC ABUSE

- 5-38-1. Purpose and definitions - **Amendment**
- 5-38-2. Crime of domestic abuse - **Amendment**
- 5-38-3. Mandatory arrest – **Amendment**
- 5-38-4. 12 hour hold - **Amendment**
- 5-38-5. Filing of complaint - **Amendment**
- 5-38-6. Liability of law enforcement officers - **Amendment**
- 5-38-7. Notice of rights - **Amendment**
- 5-38-8. Written report - **Amendment**
- 5-38-9. Penalties - **Amendment**
- 5-38-10. Reporting statistics - **Amendment**
- 5-38-11. Chapters applied - **Amendment**

5-38-1. PURPOSE AND DEFINITIONS.

The purpose of this chapter is to recognize domestic abuse as a serious crime against our society and to assure the victim of domestic abuse the maximum protection from abuse which the law and those who enforce the law can provide.

Terms used in this ordinance, unless a different meaning is clearly indicated by context, are defined as follows:

A. Family member or household member shall mean a relative, spouse, former spouse, adult or elderly person related by marriage or an adult or elderly person who resides or formerly resided in the residence.

B. Bodily injury shall mean physical pain, illness, or an impairment of physical condition.

C. Causing apprehension of bodily injury shall mean any physical act which is intended to cause another person reasonably to fear imminent serious bodily injury or death.

5-38-2. CRIME OF DOMESTIC ABUSE. A person commits the crime of domestic abuse if he or she:

- (1) Purposely or knowingly causes bodily injury to a family member or household member; or

(2) Purposely or knowingly causes apprehension of bodily injury in a family member or household member.

The crime of domestic abuse shall be a Class A crime.

5-38-3. MANDATORY ARREST.

A. A law enforcement officer shall arrest a person, anywhere, with or without a warrant, including at the person's residence, if the officer has probable cause to believe: (1) that an assault has occurred; (2) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable to the officer or not; (3) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death, and the victim is the person's family member, household member or former household member. The arrest shall be made even though the assault did not take place in the presence of the officer.

B. The officer, under this ordinance, is not required to arrest both parties when he or she believes the parties have assaulted one another. The officer shall arrest the person whom he or she believes to have been the primary aggressor. In making this determination, the officer shall make every reasonable effort to consider: (1) the intent to protect victims of domestic abuse under this ordinance; (2) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (3) the history of domestic abuse between the persons involved.

5-38-4. 12 HOUR HOLD. Any person arrested under this ordinance shall be held without bail, in the custody of the police department, for a period not to exceed twelve (12) hours, as a mandatory "cooling off" period.

5-38-5. FILING OF COMPLAINT.

(1) The law enforcement officer making an arrest under this ordinance shall sign a complaint against the alleged abuser on behalf of the Rosebud Sioux Tribe. He or she shall submit a detailed report of the circumstances of the arrest, along with statements from the victim and other witnesses.

(2) The victim shall be subpoenaed as the primary witness for the prosecution.

(3) If the perpetrator and victim are married to one another, the Husband and Wife Communication Privilege shall not apply in the crime of domestic abuse.

5-38-6. LIABILITY OF LAW

ENFORCEMENT OFFICERS. A law enforcement officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident.

5-38-7. NOTICE OF RIGHTS.

The officer shall tell the victim of domestic abuse whether a shelter or other services are available in the community and give the victim immediate notice of the legal rights and remedies available. The notice must include the victim's right to the following:

- (1) An order restraining the abuser from further acts of abuse;
- (2) An order directing the abuser to leave the household;
- (3) An order preventing the abuser from entering the residence, school, business or place of business;
- (4) An order awarding custody or visitation with any minor children;
- (5) An order directing the abuser to pay support to the victim and minor children where appropriate.

5-38-8. WRITTEN REPORT. Whenever a law enforcement officer is called to the scene of a reported incident of domestic violence, and he or she does not make an arrest, he or she shall file a written report with his or her supervisor, setting forth the reason or reasons for his or her decision.

5-38-9. PENALTIES. The purpose of this ordinance shall be to stop all family violence on the Rosebud Sioux Reservation and to promote the healing of families where possible.

A. A person convicted of a first or second offense of domestic abuse shall be imprisoned for a term of not less than ten (10) days or more than 180 days and may be fined an amount not to exceed \$500.00. The court shall require mandatory counseling as part of the sentence. Such counseling may include, but is not limited to: alcohol/drug abuse counseling, anger control, and family counseling. Persons who practice traditional Indian religion shall be entitled to counseling by a Medicine Man recognized in the community as such.

B. A person convicted of a third or subsequent offense of domestic abuse shall be imprisoned for a term of not less than 30 days or more than 365 days, and may be fined in an amount not to exceed \$2,000.00 or both. The court shall required mandatory counseling as part of the sentencing. Such counseling may include, but is not limited to alcohol/drug abuse counseling, anger control and family counseling. Counseling shall be made available for the children of the perpetrator and the children of the victim. Persons who practice traditional Indian religion shall be entitled to counseling by a Medicine Man recognized in the community as such.

5-38-10. REPORTING STATISTICS. In all cases of domestic abuse, the officer involved shall make a written report and the numbers of such cases shall be tabulated. A quarterly report shall be made by the police department, setting out the numbers of reports of domestic violence, investigations and arrests. Such statistics shall be made available to appropriate agencies and the public.

5-38-11. The following chapters of the Rosebud Sioux Tribe Law and Order Code may apply in domestic abuse cases.
 Title 2 – Chapter 3
 Title 4 – Chapter 1 – Rule 65
 Title 5 – Chapter 5
 Title 5 – Chapter 37

CHAPTER 39 - FIREWORKS

- 5-39-1. Title - **Amendment**
- 5-39-2. Authority and purpose - **Amendment**
- 5-39-3. Definitions - **Amendment**
- 5-39-4. Requirements and regulations - **Amendment**
- 5-39-5. Permissible fireworks - **Amendment**
- 5-39-6. Place of business - **Amendment**
- 5-39-7. Restricted areas - **Amendment**
- 5-39-8. Penalties - **Amendment**
- 5-39-9. Enforcement - **Amendment**

5-39-1. TITLE. This law shall be known as the Fireworks law.

5-39-2. AUTHORITY AND PURPOSE.

5-39-2.1 AUTHORITY. The Governing Body of the Rosebud Sioux Tribe is

exercising its authority pursuant to Article IV, Section 1 (h), and (m) of the Constitution and By-Laws of the Rosebud Sioux Tribe.

(1) Article IV, Section 1 (h) grants the authority in part to levy taxes or license fees upon members and non-members.

(2) Article IV, Section 1 (m) grants the authority to safeguard and promote the peace, safety, morals, and general welfare of the Tribe by regulating the conduct of trade.

5-39-2.2 PURPOSE. The purpose of this Tribal Law is:

(1) To regulate the sale of permissible fireworks and provide provisions to obtain a temporary business license;

(2) To restrict the areas where fireworks can be used and ignited;

(3) To provide provisions where all retailers must comply with Tribal Law concerning fireworks, taxation, commercial code and other applicable Tribal Laws;

(4) Limit the size and type of fireworks that can be sold and used.

5-39-3. DEFINITIONS.

(1) “Retailer” shall mean any person engaged in the business of making sales of fireworks at retail to consumers.

(2) “Sale” shall include barter, exchange, or gift or offer thereof, and such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.

(3) “Wholesaler” shall mean any person engaged in the business of making sale of fireworks at wholesaler to retailers.

5-39-4. REQUIREMENTS AND REGULATIONS.

5-39-4.1 License required for sale of fireworks...Application Fee...Duration...Display.

(1) No person shall sell, hold for sale, or offer for sale, as retailer any fireworks in this Reservation unless such person has first obtained a license as retailer. Application for a license as retailer shall be made to the department of revenue on forms to be prescribed by it. Each application shall be accompanied by the required fee, ten dollars for a retailer’s license. The license shall be good only for the calendar year in which issued and shall at all times be displayed at the place of business of the holder thereof. Applicants will consent to Tribal Law concerning taxation, Commercial Code, Business License and other Applicable laws.

(2) Importation by unlicensed persons is prohibited...Retailer.

(3) Period during which retail sales permitted. No person, firm or corporation

shall offer fireworks for sale to individuals at retail before the first day of July and after the fifth day of July.

(4) Procedure for banning sale of fireworks. The Rosebud Sioux Tribal Council can declare a ban on the sale of fireworks if just reason exists. This will be done in resolution form.

5-39-4.2 Minimum age for sale or dispensing of fireworks. No person under the age of eighteen years shall be licensed under this Chapter and no license shall employ or permit any individual under the age of eighteen to sell, dispense or offer for sale, within the State of South Dakota and Rosebud Reservation, any permissible fireworks enumerated in this Chapter.

5-39-4.3 Prohibited Firecrackers...Manufacture or use as misdemeanor. Any person who shall manufacture, use, or dispose of to another, with or without consideration, so as to endanger the safety of others, any firecrackers more than three inches long or made wholly or in part of dynamite, nitroglycerin, or giant powder, is guilty of a **Class C crime.**

5-39-4.4 Possession, sale or use of unauthorized fireworks unlawful. Except as provided in this title no person shall possess, sell, offer for sale, bring into this commonly known as fireworks, other than permissible fireworks.

5-39-5. PERMISSIBLE FIREWORKS.

A. Permissible fireworks enumerated and described below. Permissible fireworks shall mean:

(1) Roman candles, not exceeding ten balls spaced uniformly in the tube, total pyrotechnic composition not to exceed twenty grams in weight. The inside tube diameter shall not exceed three eighths inch.

(2) Skyrockets with sticks, total pyrotechnic composition not to exceed twenty grams each in weight. The inside tube diameter shall not exceed one-half inch. The rocket sticks must be securely fastened to the tubes.

(3) Helicopter type rockets, total pyrotechnic composition not to exceed twenty grams each in weight. The inside tube diameter shall not exceed one-half inch.

(4) Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five grams each in weight. The inside tube diameter shall not exceed three-fourth inch.

(5) Cone fountains, total pyrotechnic composition not to exceed fifty grams each in weight.

(6) Wheels, total pyrotechnic composition not to exceed sixty grams for each driver unit or two hundred and forty grams for each complete wheel. The inside tube diameter of driver units shall not exceed one-half inch.

(7) Illuminating torches and colored fire, in any form, except items in subdivision (12), total pyrotechnic composition not to exceed one hundred grams in weight.

(8) Sparklers and dipped sticks, total pyrotechnic composition not to exceed one hundred grams each in weight. Pyrotechnic composition containing any chlorate or perchlorate shall not exceed five grams.

(9) Mines and shells of which the mortar is an integral part, total pyrotechnic composition not to exceed forty grams each in weight.

(10) Firecrackers and salutes with casings, the external dimensions of which do not exceed one and one-half inches, in length or one-quarter inch in diameter, total pyrotechnical composition not to exceed two grains each in weight.

(11) Novelties consisting of two or more devices enumerated in this section, trick matches and cigarette plugs, when approved by the bureau of explosives.

(12) Railway fuses, truck flares, hand ship distress signals, smoke pots.

B. Exemptions. Nothing shall be construed as applying to toy paper caps containing not more than twenty-five hundredths of a grain of explosive compositions per cap, and to the manufacture, storage, sale or use of signals necessary for safe operation of railroads or other classes of public or private transportation, nor apply to the military or navy forces of the United States or to peace officers, nor as prohibited the sale or use of blank cartridges for ceremonial, or theatrical, or athletic events.

5-39-6. PLACE OF BUSINESS.

A. Sale from vehicle prohibited. No retailer shall sell fireworks from any motor vehicle.

B. Exits from structures where fireworks sold. All buildings or structures wherein fireworks are sold at retail shall have at least two separate door exits which shall be equipped with panic devices or kept unlocked at all times when fireworks are being offered for sale.

C. "No Smoking" signs where fireworks sold. Signs must be prominently

posted on all displays of fireworks offered for sale at retail, which shall read in red letters not less than three inches in height. "NO SMOKING WITHIN TWENTY-FIVE FEET".

D. Minimum distance for igniting of fireworks. In all buildings or structures wherein fireworks are being offered for sale the licensee shall have a sign prominently posted stating that no fireworks can be ignited or discharged within one hundred fifty feet of the licensee's premises.

E. Open flame prohibited where fireworks sold...Fire extinguishing agent required. No license shall have on his premises any device, apparatus, receptacle or burner from which an open flame is emitted. Provided, further that every licensee shall in the conduct of his business of selling fireworks keep and maintain upon said premises a fire extinguisher agent for a class A fire equivalent to two and one-half gallons of water.

5-39-7. RESTRICTED AREAS.

A. Sale or use prohibited within timber reserve and/or other designated area. No person shall sell or cause to be sold, discharge or cause to be discharged, any pyrotechnics of any description whatever within the exterior boundaries of the timber reserve or any land owned or leased by the department of game, fish and parks. However, the director of game, fish and parks may, by written authorization, permit pyrotechnic displays or exhibited on land owned or leased by the department unless otherwise prohibited by statute.

B. Public displays permitted...Local permit required. Nothing shall prohibit the use of public display of fireworks provided that any individual, group of individuals, association, organization, city, town, county, firm, partnership or corporation, prior to making such public display for fireworks, shall first secure a written permit to do so from the Rosebud Sioux Tribe wherein said public displays is to be fired, and shall be purchased fireworks for such display from a licensed wholesaler.

5-39-8. PENALTIES.

A. Violation of Chapter. Except where a punishment is specifically provided, any person violating any of the provisions of this chapter shall be **guilty of a Class C crime.**

B. Second conviction as ground for revocation or suspension of license. If any person is found guilty of violating any of

the provisions of this chapter a second time, such violation may constitute cause for revocation or suspension of the license held by such person or for refusal to renew such license upon expiration thereof.

5-39-9. ENFORCEMENT. Enforcement by department and law enforcement officers. The department of revenue, together with all law enforcement officers, both BIA and tribal, shall be charged with the enforcement of the provisions of this chapter.

A. Possession of unauthorized firework unlawful...seizure and destruction. No person shall possess any fireworks, other than those enumerated above. If any person shall have in his possession any fireworks in violation of said Section, a warrant maybe issued for the seizure of such fireworks, and such fireworks shall be safely kept to be use as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the firework shall be returned to the person those possession they were found, provided, however, that nothing in this chapter shall apply to the transportation of fireworks by regulated carriers.

CHAPTER 40 – RECEPTACLES

- 5-40-1. Definition of terms - **Amendment**
- 5-40-2. Receptacles in public places - **Amendment**
- 5-40-3. Property where receptacles required - **Amendment**
- 5-40-4. Placement and specifications of receptacles - **Amendment**
- 5-40-5. Littering prohibited – exceptions - **Amendment**
- 5-40-6. Littering from motor vehicle prohibited - **Amendment**
- 5-40-7. Accumulation of litter on property prohibited - **Amendment**
- 5-40-8. Enforced removal of litter upon conviction - **Amendment**
- 5-40-9. Violation of chapter - **Amendment**
- 5-40-10. Enforcement and prosecution - **Amendment**
- 5-40-11. Injunction of violations – citizens' suits – alternative or in addition to criminal proceedings - **Amendment**

5-40-1. DEFINITIONS OF TERMS. Terms used in this chapter mean:

(1) "Person" shall mean any individual, partnership, corporation or company or any agent of said individual, partnership, corporation or company.

(2) "Owner" shall mean any individual, partnership, corporation or company that actually owns, has the use of or occupies any property, either residential or commercial.

(3) "Litter" any discarded, used or unconsumed substance or waste, including but not limited to any garbage, trash, refuse, debris, rubbish, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned or junked motor vehicles, motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

5-40-2. RECEPTACLES IN PUBLIC PLACES. In order to assist the public in complying with this chapter, the owner or person in control of any property which is held out to the public as a place for assemblage, the transaction of business, recreation or as public way shall cause to be placed and maintained receptacles for the deposit of litter, of sufficient volume and in sufficient numbers to contain the litter which can be expected to be generated by the numbers of people customarily coming on or using the property.

5-40-3. PROPERTY WHERE RECEPTACLES REQUIRED. For purposes of 5-40-2, "property held out to the public for the transaction of business" includes, but is not limited to, commercially operated parks, campgrounds, drive-in restaurants, automobile service stations, business parking lots, car washes, shopping centers, boat launching areas, industrial parking lots, boat moorage and fueling stations, piers, beaches and bathing areas, airports, roadside rest stops, city, town or community celebration or "Pow-Wow" grounds, rodeo grounds, baseball fields; and "property held out to the public for assemblage, recreation or as a public way" includes, but is not limited to, any property that is publicly owned or operated for any of the purposes stated in the definition in this section for "property held out to the public for the transaction of business."

5-40-4. PLACEMENT AND SPECIFICATIONS OF RECEPTACLES ON TRIBAL PROPERTY. The Director of the Department of Game, Fish and Parks shall promulgate rules and regulations governing the placement and specifications of litter receptacles on property belonging to the Rosebud Sioux Tribe.

5-40-5. LITTERING PROHIBITED- EXCEPTIONS. No person shall dump, deposit, drop, throw, discard, leave, cause or permit the dumping, depositing, dropping, throwing, discarding or leaving of litter upon any public or private property, or upon or into a river, lake, pond, or other body of water, within the jurisdiction of the Rosebud Sioux Tribe, unless:

(1) The property has been designated by the Rosebud Sioux Tribe or any of its agencies for the disposal of litter, and the litter is disposed of on that property in accordance with the applicable law of the Rosebud Sioux Tribe;

(2) The litter is placed into a receptacle or other container intended by the owner or tenant in lawful possession of that property for the deposit of litter;

(3) The person is acting under the direction of proper public officials during special cleanup days; or

(4) The person is lawfully acting in or reacting to an emergency situation where health and safety is threatened, and remove and properly dispose of such litter when the emergency situations no longer exists.

5-40-6. LITTERING FROM MOTOR VEHICLE PROHIBITED. No person shall dump, deposit, drop, throw, discard or otherwise dispose of litter from any motor vehicle upon any public highway, upon any public highway, upon any public or private property or upon or into any river, lake, pond, stream or body of water within the jurisdiction of the Rosebud Sioux Tribe.

5-40-7. ACCUMULATION OF LITTER ON PROPERTY PROHIBITED. No person shall allow litter to accumulate upon real property, of which the person charged is the owner or tenant in control, in such a manner as to constitute a public nuisance, or which results in an unsafe, unsanitary, or unsightly condition, or such a manner that the litter may be blown or otherwise carried by the natural elements onto the real property of another person.

5-40-8. ENFORCED REMOVAL OF LITTER UPON CONVICTION-COSTS TAXED AGAINST VIOLATION. In addition to any fine imposed under this chapter, the court may order that the person convicted of any violation under this chapter remove and properly dispose of the litter, may employ special bailiffs to supervise such removal and disposal, and may tax the costs of such supervision as costs against the person so convicted.

5-40-9. VIOLATION OF CHAPTER. Any person who violated any of the provisions of this chapter is **guilty of a Class B offense**. The penalties prescribed by this section and by 5-34-1 are in addition to, and not in lieu of, any penalties, rights, remedies, duties or liabilities otherwise imposed or conferred by law.

5-40-10. ENFORCEMENT AND PROSECUTION. This chapter shall be enforced by all law enforcement officers, Tribal or Bureau of Indian Affairs, any officers of the Department of Game, Fish and Parks, and any other officers or persons authorized by the Rosebud Sioux Tribe to enforce Tribal law. Prosecutions for violation of this chapter shall be conducted by the prosecutors for the Rosebud Sioux Tribe. The prosecutor of the Rosebud Sioux Tribe may also file for an injunction against continuing violations.

5-40-11. INJUNCTION OF VIOLATIONS-CITIZENS' SUITS-ALTERNATIVE OR IN ADDITION TO CRIMINAL PROCEEDINGS. Any person violating the provisions of this chapter may be enjoined from further violations in the Rosebud Sioux Tribal Court. Such suits may be brought by any person. An action for injunction shall be an alternative to, or in addition to, criminal proceedings. Nothing in this section shall prevent any person from bringing a civil action for any damage of any nature whatsoever sustained as a result of any violations of this chapter.

CHAPTER 41 – ILLEGAL SALE AND MISUSE OF COMMODITIES AND RELATED CRIMES

5-41-1. Illegal sale and misuse of commodities and related crimes - **Amendment**

5-41-2. Categories if illegal sale and misuse of commodities – **Amendment**
5-41-3. Tribal felony defined – **Amendment**

5-41-1. ILLEGAL SALE AND MISUSE OF COMMODITIES AND RELATED CRIMES DEFINED. Any person who, in violation of tribal and/or federal law, receives, retains, disposes, sells, barter, embezzles, steals, willfully misapplies or obtains by fraud, any funds, assets, or property, which at any time are issued by, possessed or owned by the United States Department of Agriculture Food Distribution Program (USDA Commodities); the Women’s, Infants and Children supplemental food program (WIC), or any Tribal Food Assistance Program, or programs of like nature, or whoever, in violation of federal and/or tribal law, receives, conceals, or retains such funds, assets or property for their use and gain, knowing such funds, assets, or property for their use and gain, knowing such funds, assets, or property have been received, retained disposed, sold, bartered, embezzled, stolen, willfully misapplied or obtained by fraud, shall be guilty of the illegal sale and misuse of commodities and related crimes.

5-41-2. CATEGORIES OF ILLEGAL SALE AND MISUSE OF COMMODITIES AND RELATED CRIMES. Any violations under this chapter shall be punishable according to the classes of crime defined in Chapter Two above, as follows:
(1) If the value of the funds, assets or property involved is less than \$50, **it shall be a Class C crime.**
(2) If the value of the funds, assets or property involved is \$50 or more, **it shall be a Class B crime.**
(3) If the value of the funds, assets or property involved is \$200 or more, **it shall be a Class A crime.**
(4) If the value of the funds, assets or property involved is \$1,000 or more, **it shall be a tribal felony.**

If no evidence as to the value of the funds, assets or property involved in a violation of this chapter is presented and the value of such is not obvious without presentation of such evidence, and it is otherwise proven that a violation has occurred, **the crime shall be a Class C crime.**

5-41-3. TRIBAL FELONY DEFINED. A tribal felony carries a maximum penalty of a fine not to exceed Five Thousand Dollars (\$5,000.00) and court costs or a jail term not to exceed one year or both the fine and the jail term.