

ARTICLE 4

PEACE CODE

PART 1

GENERAL PROVISIONS

Section 4.1.010 Applicability

The following article shall hereinafter be referred to as the "Ysleta del Sur Pueblo Peace Code." An action under this code does not preclude other possible actions under another section of this code nor a criminal action by another jurisdiction.

Section 4.1.020 Jurisdiction

The civil jurisdiction of the Tribal Court is set forth in Section 2.2.040 and Section 2.2.041(A) through (D) of Article II, the Judicial Code of the Ysleta del Sur Pueblo.

Section 4.1.030 Purposes and Interpretation

This code shall be interpreted and construed to:

- (A) Preserve the peace, harmony, safety, health and general welfare of the people of the Tribe and those permitted to enter or reside on the Reservation;
- (B) Ensure peace and order on the Reservation and lands of the Ysleta del Sur Pueblo;
- (C) Promote the welfare of the Tribe and its members;
- (D) Safeguard individual rights and community standards;
- (E) Secure rights and powers, which are inherent in the Tribe's sovereign status;
- (F) Assert jurisdiction over all matters essential to the Tribe's self-determination and self-governance;
- (G) Treat all parties fairly and without discrimination, protecting individual rights guaranteed by the Indian Civil Rights Act and by the traditions, customs and laws of the Tribe;
- (H) Resolve disputes fairly and efficiently; and
- (I) provide an orderly procedure for resolving conflicts which reflects tribal customs and traditions as well as the prevailing community standards, and which affords all affected persons a fair, prompt and impartial hearing.

Section 4.1.040 RIGHTS OF THE PEOPLE

Section 4.1.041 Personal Liberties

Each member of the pueblo of Ysleta del Sur shall be assured his private rights under the Indian Civil Rights Act and no attempt shall be made by any officer of the Pueblo to enforce any order upon him depriving him of said rights.

Section 4.1.042 Other Rights Not Impaired

- (A) The enumeration herein of certain rights shall not be construed to deny or disparage others retained by the people.
- (B) Open Records - The YDSP will not deny to any member the access to his own personal information maintained by the Tribe or to public information which shall include but not be limited to financial records maintained by the Tribe.
- (C) Retained Powers.

Powers not granted to the government shall be reserved to the People.

Section 4.1.050 RULES GOVERNING EVIDENCE AND CIVIL PROCEDURE

All actions involving civil infractions shall be conducted in a fair, informal and just manner. The Tribal Rules of Evidence as set forth in Article II, Judicial Code, Section 2.2.080-82, and the Tribal Rules of Civil Procedure as set forth in Article II, Judicial Code, Section 2.2.090-95 may be used as a guide or as persuasive authority for actions involving civil infractions, but shall not be used as binding or mandatory authority for actions involving civil infractions.

Section 4.1.060 FULL FAITH AND CREDIT OF FOREIGN COURT ORDERS

Court orders of other tribal and state courts involving minors over whom the YSDP Tribal Court could take jurisdiction may be recognized by the YSDP Court after the Court has provided due and proper notice to the parties and after hearing determined on the record:

- (A) That the other court exercises proper subject matter and personal jurisdiction over the parties;
- (B) That due process was accorded to all interested parties participating in the court proceedings;
- (C) That applicable provisions of ICWA, 25 U.S.C. §§ 1901-1963, et seq., were properly applied and followed;
- (D) That the other court proceedings do not violate the public policies, tribal customs, or common law of the Tribe; and
- (E) The order or judgment was not fraudulently obtained.

Section 4.1.070 DEFINITIONS

- (A) "**Alguacil**" means the elected Tribal Sheriff of the Ysleta del Sur Pueblo.
- (B) "**As amended**" means as amended as of the date of the civil infraction.
- (C) "**Child**" means a person who is less than eighteen (18) years of age.
- (D) "**Civil Infraction**" means a violation of tribal law as set forth in this Code.
- (E) "**Dangerous Weapon**" means any firearm, or other weapon, device instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury. (Example: club, brass knuckles, etc.)
- (F) "**Expulsion/Banishment**" means to ban, forbid, exclude, excommunicate or cut off a person from privileges at Ysleta Del Sur Pueblo permanently or for a specified period of time as part of a court order for breach of duty, improper conduct, a violation of a court order, or other sufficient lawful cause.
- (G) "**Final Order**" means an order or judgment of the court that finally disposes of the rights of the parties and from which an appeal can be taken. It is a general rule that orders entered during the course of a pending case are not appealable until the entire case is resolved.
- (H) "**Governor**" means the elected Governor of the Ysleta Del Sur Pueblo.
- (I) "**Guardian**" means a person assigned by a court of law, other than a parent, having the legal custody of the child, to provide duty of care.

- (J) "**His**" means he or she, his or her, and singular includes plural.
- (K) "**Interlocutory Appeal**" (or interim appeal) is an appeal of a ruling by a trial court that is made pertaining to subject matter jurisdiction, personal jurisdiction over a party, and/or immunities from suit.
- (L) "**Law Enforcement Officer**" means:
- (1) "Tribal Law Enforcement Officer" means any YDSP law enforcement personnel exercising lawful authority such as:
 - (a) The Alguacil -when performing official duties;
 - (b) Ysleta Del Sur Pueblo Tribal Police member.
 - (2) Any other law enforcement member commissioned by the U.S. Government, State of Texas, County of El Paso or City of El Paso when performing official duties.
 - (3) Any security personnel under contract with Ysleta Del Sur Pueblo – when performing official duties.
- (M) "**Lt. Governor**" means the elected Lt. Governor of Ysleta Del Sur Pueblo.
- (N) "**Minor**" means a person who is less than twenty one (21) years old.
- (O) "**Parent**" means a natural or adoptive parent, but does not include person whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.
- (P) "**Reservation**" means the Ysleta del Sur Pueblo Reservation as established existing and geographically defined under the Laws of the United States, encompassing all territory within its exterior boundaries as now or hereafter prescribed or ascertained, including fee patented lands, roads, waters, bridges, lands and rights of way owned, used and claimed by any person.
- (Q) "**Tribal Council**" means the governing Tribal Council of Ysleta del Sur Pueblo.
- (R) "**Tribal Court**" means the trial Court created, existing and operating under the provisions of the Tribal Code of Laws and the judges of the Court, collectively and individually, serving and acting in that office and capacity.
- (S) "**Tribal building**" means any building held, used, or controlled by the Ysleta Del Sur Pueblo exclusively for the tribal purposes of the Pueblo.
- (T) "**Tribal property**" means any property held, used, or controlled by the Ysleta Del Sur Pueblo exclusively for the tribal purposes of the Pueblo.
- (U) "**Tribal Official**" means any person authorized to officiate over tribal business or functions of Ysleta Del Sur Pueblo.
- (V) "**Tribe**" means the Ysleta Del Sur Pueblo and "tribal" means belonging or pertaining to the Tribe.
- (W) "**YDSP**" means Ysleta Del Sur Pueblo.
- (X) "**Ysleta del Sur Pueblo**" means a federally recognized Indian Tribe, exercising all inherent governmental powers, fiscal authority and tribal sovereignty as recognized in the Ysleta del Sur Pueblo Restoration Act (Public Law 100-89, 101 Stat. 666, as codified at 25 U.S.C. § 1300(g)). Ysleta Del Sur Pueblo is also commonly referred to as the Tigua Indian Reservation or the "Pueblo".

PART 2 CIVIL PENALTIES

Section 4.2.010 GENERAL PENALTY PROVISIONS

- (A) A person committing a violation under this code shall be subject to a civil assessment as set forth in this section.
- (B) In addition to, or in lieu of, the civil assessment, the Court may grant such other relief as is necessary and proper, including, but not limited to the following: community service, restitution, treatment/counseling, expulsion/banishment and/or traditional sanctions.
- (C) The Court also has the authority to forfeit property, dissolve a corporation, dissolve a contract, suspend or cancel a license or permit or cite for contempt.
- (D) Civil Infractions provisions enacted after the effective date of this Code shall be classified for civil penalty purposes in accordance with this section.

Section 4.2.020 CLASSIFICATION OF CIVIL INFRACTIONS

Civil infractions are categorized according to the seriousness of the violation. These civil infractions shall be divided into three categories:

- (A) Class C Civil Infraction
- (B) Class B Civil Infraction
- (C) Class A Civil Infraction

Section 4.2.030 CIVIL ASSESSMENTS

The following civil assessments shall apply to each infraction:

- (A) Class C Civil Infraction - a civil assessment not to exceed \$250.
- (B) Class B Civil Infraction - a civil assessment not exceed \$2,000.
- (C) Class A Civil Infraction - a civil assessment not to exceed \$5,000.

Section 4.2.040 PENALTIES FOR REPEATED CIVIL INFRACTIONS

Any person who repeatedly commits a civil infraction shall be subject to the following penalties:

- (A) A person violating a Class C civil infraction a third (3rd) time within twenty four (24) months may be subject to a Class B Civil Assessment; or
- (B) A person violating a Class C civil infraction four (4) or more times within twenty four (24) months may be subject to Class A Civil Assessment; or
- (C) A person violating a Class B civil infraction three (3) times or more within twenty four (24) months may be subject to a Class A Civil Assessment.
- (D) A person violating a Class A civil infraction three (3) times or more within twenty four (24) months may be subject to expulsion or exclusion.

Section 4.2.050 CIVIL PENALTIES DEFERRED

The Court may defer or suspend civil penalties for a period not to exceed one (1) year if justice so requires and/or the following criteria is met:

- (A) The person has not committed any previous violations of this Code;
- (B) The person does not commit any other violations of this Code;
- (C) The person does not commit any infractions, violations or offenses in any other jurisdictions; or
- (D) The person complies with all Court orders concerning the civil infraction to the best of his ability.

Section 4.2.060 COMMUNITY SERVICE

The Court recognizes that persons who commit civil infractions may be unable to make amends. For this reason the Court, at its discretion, may order community service in addition to or in lieu of a civil assessment. The judge shall determine if the person is a suitable candidate for community service and will carry out the service faithfully.

- (A) Community Service shall be determined at an hourly rate of five dollars (\$5.00) per hour;
- (B) This service is limited to:
 - 1. Tribal property or tribal agencies/enterprises; or
 - 2. The primary residence of a tribal elder;
- (C) Tribal agencies or elders requiring services must submit a written request to the Court Clerk;
- (D) Assistance will be distributed in the order that requests were received.
- (E) The YDSP Tribal Court will keep a log of both services requested and performed.
- (F) The Court will provide a form for verification of community service to the community service worker.
- (G) The community service worker shall be responsible for:
 - 1. Obtaining written verification from the monitoring supervisor on the provided form; and
 - 2. Submitting the form to the Court as required.

Section 4.2.070 REFERRAL FOR TREATMENT

- (A) In lieu of, or in addition to a civil penalty, the Court, at its discretion, may refer persons to mental health providers including an alcohol/substance abuse program, and/ or social services program for an assessment, evaluation, counseling and/or treatment.
- (B) After completion of assessment or evaluation, the agency shall report findings and recommendations to the Court or an officer assigned by the Court.
- (C) The Court may order mental health providers to submit progress reports of treatment. An officer assigned by the Court shall monitor the person through the reports.
- (D) Residential treatments are an option for civil infraction violators upon their request and if substantiated by an authorized mental health agency.

Section 4.2.080 SEIZURE / FORFEITURE OF PROPERTY

All property utilized in violation of this Peace Code shall be subject to seizure and forfeiture by order of the Tribal Court. The Tribe shall return any property confiscated to its rightful owner after it is used for evidentiary purposes in an official proceeding or unless a complaint for forfeiture is filed within thirty (30) days of the seizure. If the Tribal Court determines that the possession of the property is unlawful or in violation of this Peace Code, then the property shall become the property of the Tribe.

Section 4.2.090 ENFORCEMENT OF CIVIL ASSESSMENTS

- (A) In any case where a person has been found to have committed a civil Infraction and a civil penalty has been assessed, the person shall have thirty (30) days to pay the civil assessment, unless otherwise specified by the Judge. For good cause shown, the Court may extend the time for payment or approve an installment plan.
- (B) If the person has not paid the civil assessment within the time allotted by the Court, then the Court may issue the following orders, after proper notice and hearing:
 - (1) An order to a Tribal employer garnishing a maximum of ten percent (10%) of their wages;
 - (2) An order to the Tribal Comptroller or other appropriate Tribal Official garnishing up to one hundred percent (100%) of any Tribal per capita distribution;
 - (3) Sell any property confiscated under section 4.2.080 of this Peace Code up to the amount of the Civil Assessment;
 - (4) Temporary Vehicle Impound as specified in a tribal court order;
 - (5) Exclusion/Banishment as specified in a tribal court order; or
 - (6) Restriction or Loss of Tribal Benefits as specified in a tribal court order.

Section 4.2.100 ELECTRONIC MONITOR PROGRAM

- (A) In lieu of or in addition to a civil penalty the Court, at its discretion, may require any Respondent to submit to electronic monitoring.
- (B) The court may require the defendant/respondent to pay the reasonable cost incurred in the use of the home monitoring program or for any damages to the Field Monitoring Device or Transmitter, including the cost of electronic monitoring.

PART 3

Civil Infractions Against Property

Section 4.3.010 Definitions

For this part the following definitions will apply:

- (A) "**Alter**" means to change, modify, or vary in some degree; to change some of the elements, ingredients or details without substituting an entirely new thing or destroying the identity of the thing affected.
- (B) "**Damage**" means loss, injury, or deterioration to tangible property causing it to decrease in strength, value, amount or quality.
- (C) "**Destroy**" means to ruin the structure, organic existence or condition of a thing; to demolish; to injure or mutilate beyond possibility of use.
- (D) "**Deface**" means damage to monuments, buildings or other structures by changing the physical appearance or to mar or destroy the physical appearance of a written instrument signature or inscription as to render it illegible or unrecognizable.
- (E) "**Effective consent**" includes consent by a person legally authorized to act for the owner. Consent is not effective if:
 - (1) induced by deception or coercion;
 - (2) given by a person the actor knows is not legally authorized to act for the owner;
 - (3) given by a person who by reason of youth or advanced age, mental disease, or defect, or intoxication is known by the actor to be unable to make a reasonable property disposition;
- (F) "**Pecuniary loss**" means a loss of money, or of something by which money or of value may be acquired. Everything having monetary value and is determined by the value of the amount property damaged or destroyed.
- (G) "**Property**" means:
 - (1) Real property; or
 - (2) Tangible personal property, including anything severed from land; or
 - (3) A document, including money that represents or embodies anything of value.
- (H) "**Private property**" means property protected from being taken for tribal use, as such property belongs absolutely to an individual.
- (I) "**Tribal**" means belonging or pertaining to the Tribe.
- (J) "**Tangible Property**" means property that has value in itself, personal, capable of being possessed; such as is capable of being apprehended by the senses, which is accessible or identifiable.

Section 4.3.020 MALICIOUS MISCHIEF

A person commits the civil infraction of Malicious Mischief if he, without the effective consent of the owner:

- (A) Damages or destroys the tangible property of the owner; or
- (B) Tamper with tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person; or
- (C) Makes markings including inscriptions, slogans, drawings, or painting on the tangible property of the owner; or
- (D) Alters, defaces, or damages in any way tribal owned community property: a monument, structure or facility, place of worship or burial or any other object of veneration respected by the community of Ysleta del Sur Pueblo; or
- (E) Aids, abets, commands, or counsels another to commit malicious mischief.

Section 4.3.021 Civil Penalty

An infraction under **subsections (A), (B) and (C)** is a:

Class C Civil Infraction if the amount of pecuniary loss is less than \$20; or
Class B Civil Infraction if the amount of pecuniary loss is more than \$20, but less than \$500; or
Class A Infraction if the amount of pecuniary loss is more than \$500.

An infraction under **subsection (D)** is a Class A civil infraction.

Subsection (D) is also subject to traditional sanctions.

Section 4.3.030 TRESPASS

A person commits the civil infraction of Trespass if he enters or remains on tribal or private property or a building of another without effective consent and he:

- (A) Had notice that the entry was forbidden;
- (B) Received notice or order to depart but failed to do so.

Section 4.3.031 Notice

Such notice or order may be given by:

- (A) Written or verbal communication given to the intruder by a tribal official, law enforcement officer, the owner of the property or a person authorized to act on behalf of the owner; or
- (B) Written notice posted on or about the property in a manner reasonably likely to come to the attention of potential intruders; or
- (C) Fences, barricades or other devices manifestly designed to enclose the property and to exclude potential intruders.

Section 4.3.032 Civil Penalty

An infraction under this section is a Class B civil infraction, unless it is committed in a habitation or a shelter center or unless the actor carries a dangerous weapon on or about his person during the commission of the infraction, in which event it is a Class A civil infraction.

Section 4.3.033 Definitions

As used in this section:

"Enclose" or "Bounded" means to surround; to encompass; to bound, to fence in or hem in on all sides.

"Entry or Enter" means the unlawful making of one's way into tribal or another's property, building, dwelling or house.

"Habitation" means dwelling place; residence within the jurisdiction of Ysleta del Sur Pueblo.

"Intruder" means one who enters upon land or buildings without either right of possession or color of title.

"Owner" means the person or entity in whom is vested the ownership, dominion, or title of property.

"Shelter/Community Center" means a tribally owned facility utilized for the benefit of the community with proper environments, as well as protection from the weather.

Section 4.3.040 RECKLESS DAMAGE OR DESTRUCTION

A person commits the civil infraction Reckless Damage or Destruction if without the effective consent of the owner, he recklessly damages or destroys property of the owner.

Section 4.3.041 Civil Penalty

An infraction under this section is a:

Class C Civil Infraction if the amount of pecuniary loss is less than \$20; or

Class B Civil Infraction if the amount of pecuniary loss is more than \$20, but less than \$500; or

Class A Infraction if the amount of pecuniary loss is more than \$500.

Section 4.3.042 Definitions

"Recklessly" means a person acts recklessly, or is reckless, with respect to circumstance surrounding his conduct or the result of his conduct when he is aware of, but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the person's standpoint.

Section 4.3.050 THEFT

A person commits the civil infraction of Theft if he:

- (A) Obtains, exercises control over, or conceals anything of value of another without the effective consent of the owner; or
- (B) Having lawfully obtained possession for temporary use of the property, deliberately and without effective consent, fails to return or reveal the whereabouts of said property to the owner, his representative or the person from which he has received it with the intent to permanently deprive the owner of its use and benefit.

Section 4.3.051 Civil Penalty

An infraction under this section is:

Class C Civil Infraction if the amount of pecuniary loss is less than \$20; or

Class B Civil Infraction if the amount of pecuniary loss is more than \$20, but less than \$500; or

Class A Infraction if the amount of pecuniary loss is more than \$500.

Section 4.3.060 THEFT OR IMPROPER USE OF VENERATED OBJECT

A person commits the civil infraction of Theft of a Venerated Object if he:

- (A) Obtains, exercises control over, or conceals any venerated object or any other object respected by the Ysleta del Sur Pueblo Community without the effective consent of the tribal community; or
- (B) Having lawfully obtained possession for temporary or religious use of the object of veneration; deliberately and without effective consent fails to return or reveal the whereabouts of said object to the Tribe, the proper tribal official or the person from which he has received it with the intent to permanently deprive the Tribe of its use and benefit, or
- (C) Uses a venerated object in an improper manner.

Section 4.3.061 Civil Penalty

A civil infraction under this section is a Class A civil infraction. In addition, an infraction under this section is subject to traditional sanctions to be administered by traditional officials.

Section 4.3.062 Definitions

As used in this section.

“Improper manner” means in a sacrilegious manner or not in accord with propriety, traditional practices and/or values of the Ysleta del Sur Pueblo.

"Venerated Object" means any traditional object of worship, devotion, reverence or adoration by the tribal community (i.e. Juanchido, Varas, etc.).

Section 4.3.070 FRAUD

A person commits the civil infraction of Fraud if, to obtain property, money, gain advantage, interest, asset or services for himself or another, or;

- (A) Makes a materially false or misleading statement which he knows to be untrue or makes a remark with reckless disregard to the accuracy of the statement; or
- (B) Withholds information by misrepresentation or deceit; or
- (C) With intent to defraud or harm another, he destroys, removes, conceals, alters, substitutes or otherwise impairs the verity, legibility, or availability of a writing.

Section 4.3.071 Civil Penalty

An infraction under this section shall be held upon the discretion of the judge with a civil penalty of no less than \$250 and not to exceed \$5,000 unless pecuniary loss is involved, in which case it is a:

Class C Civil Infraction if the amount of pecuniary loss is less than \$20; or

Class B Civil Infraction if the amount of pecuniary loss is more than \$20, but less than \$500; or

Class A Infraction if the amount of pecuniary loss is more than \$500.

Section 4.3.072 Definitions

As used in this section:

"Gain" means something of exchangeable value however vested, received or drawn for separate use, benefit and disposal; profit, value or pecuniary gain.

"Knows" means a person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of this conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

"Writing" means:

- (1) Printing or any other method of recording information;
- (2) Any legal document or contract;
- (3) Any form of personal identification.

Section 4.3.080 GLASS CONTAINERS PROHIBITED IN TRIBAL PARKS OR RECREATION AREAS

A person commits the civil infraction of Glass Containers Prohibited in Tribal Parks or Recreation Areas if he possesses any glass containers in tribal parks or recreation areas.

Section 4.3.081 Civil Penalty

An infraction under this section is a Class C civil infraction.

PART 4

Civil Infractions Against The Peace

Section 4.4.010 DISORDERLY CONDUCT

A person commits the civil infraction of Disorderly Conduct if he:

- (A) Fights with another within the confines of the Reservation;
- (B) At any location within Ysleta del Sur Pueblo; creates any excessive noise or to suffer, allow, or permit the creation of any excessive noise on property owned, leased, occupied or otherwise controlled by such person which causes or creates a nuisance;
- (C) Discharges a firearm and/or air guns that are prohibited;
- (D) Not being lawfully authorized to do so, displays a dangerous weapon in a tribal place in a manner calculated to alarm;
- (E) Abuses or threatens a person on a tribal property or tribal building in an obviously offensive manner;
- (F) Lies or sleeps on any tribal street, alley or sidewalk, or in any other tribal property, or upon private property that he has no right to occupy;
- (G) Drinks an alcoholic beverage on any tribal street, alley or sidewalk, or in any other tribal property, tribal building, or upon private property that he has no right to occupy;
- (H) Exposes his anus or genitals in a tribal place and is reckless about whether another may be present who will be offended or alarmed by this act;
- (I) Engages in lewd behavior and is reckless about whether another is present who will be alarmed by his act; or
- (J) Uses abusive, indecent, profane, or vulgar language in a tribal building or tribal property, and the language by its very utterance tends to incite an immediate breach of the peace.

Section 4.4.011 Exceptions

No person may discharge a firearm on the Reservation of Ysleta del Sur Pueblo except the following persons when acting in the scope of their employment or traditional duties:

- (1) The Alguacil (Tribal Sheriff) - when performing official duties;
- (2) Tribal Law Enforcement member;
- (3) Any other law enforcement member - when performing official duties;
- (4) Any security personnel under contract with the Tribe;
- (5) The proper participants in a religious activity may discharge firearms for use in such activity.
(Persons will be designated by the Tribal Council)

Section 4.4.012 Civil Penalty

An infraction under this section is a Class C Civil Infraction unless committed under **subsections D** in which event is a Class B Civil Infraction or under **subsection C**, in which event is a Class A.

Section 4.4.013 Definitions

As used in this section,

"**Airgun**" means any air powered device capable of propelling a projectile, such as a B.B. gun, pellet gun or paintball gun.

"**Firearm**" Any device capable of firing or propelling a projectile, such as a shotgun, bow and arrow, and a slingshot, is a firearm. The definition does not include construction type devices such as compressed-air nail guns when such devices are used in the manner for which they were designed.

"**Lewd Behavior**" means any act of;

- (1) Touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person, or
- (2) Penetration of the female sex organ by the male sex organ, or
- (3) Any contact between any part of the genitals of any person and the mouth or anus of another person, the penetration of the genitals or the anus of another person with an object.

Section 4.4.020 CARRYING A PROHIBITED WEAPON

A person commits the civil infraction of Carrying a Prohibited Weapon if he bears or carries on or about his person;

- (A) An illegal knife; or
- (B) Firearm or airgun (when used illegally); or
- (C) Other dangerous weapons as defined.

The Alguacil or any member of the Tribal Police Law Enforcement may, upon probable cause, confiscate the weapon from any person who violates this section.

Section 4.4.021 Exceptions

No person may bear or carry a firearm on the Reservation of Ysleta del Sur Pueblo except the following authorized persons with a lawful permit issued by the Tribal Council or such other authority designated by it, or by written permit or other authority of the United States:

- (1) The Alguacil (Tribal Sheriff) - when performing official duties; or
- (2) A member of the Tribal Law Enforcement; or
- (3) Any other law enforcement officer - when performing official duties; or
- (4) Any security personnel under contract with the Tribe; or
- (5) The proper participants in a tribal religious activity may carry a firearm with the proper background investigation; or
- (6) Any person living on the Reservation may possess a weapon within such persons residence; or
- (7) Any person may bear or carry on his person a firearm when transporting a weapon to or from his residence.

Section 4.4.022 Civil Penalty

An infraction committed under this section is a Class B infraction unless committed under **subsection B** in which case it becomes a Class A civil infraction. The weapon involved when the violation was committed is subject to forfeiture by the Court to the Tribe.

Section 4.4.023 Definitions

As used in this section.

"**Airgun**" means any air powered device capable of propelling a projectile, such as a B.B. gun, pellet gun or paintball gun.

"**Dangerous Weapon**" means any firearm, or other weapon, device instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury. (Example: club, brass knuckles, etc.)

"**Firearm**" Any device capable of firing or propelling a projectile, such as a shotgun, bow and arrow, and a slingshot, is a firearm. The definition does not include construction type devices such as compressed-air nail guns when such devices are used in the manner for which they were designed.

"**Illegal Knife**" means any bladed hand instrument with a blade above 4.5 inches in length that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument to include any: dagger, dirk, knife, sword, spear, stiletto, butterfly knife or a spring loaded blade.

Section 4.4.030 GANG RELATED ACTIVITY

A person commits a civil infraction under this section if he participates in a Gang Related Activity.

Section 4.4.031 Civil Penalty

An infraction under this section is a Class B civil infraction.

Section 4.4.032 Definitions

As used in this section.

"**Gang**" is a "somewhat" organized group of individuals:

- (1) Who create an atmosphere of fear and intimidation in the community; and
- (2) Are recognized by both its own members and others; and
- (3) Engage in acts injurious to the public health and morals of Ysleta del Sur Pueblo; and/or
- (4) Whose sole purpose is to engage or have engaged in gang-focused illegal activity either individually or collectively.

Section 4.4.040 COERCING, SOLICITING, OR INDUCING GANG MEMBERSHIP

A person commits a civil infraction under this section if, with intent to coerce, induce, or solicit to actively participate in the activities of a gang, the person:

- (A) Threatens his relatives with imminent bodily injury or death; or
- (B) Causes bodily injury to the person

Section 4.4.041 Civil Penalty

An infraction under **subsection (A)** is a Class B civil infraction.

An infraction under **subsection (B)** is a Class A civil infraction.

Section 4.4.050 CURFEW

A person commits the violation of Curfew if:

- (A) He is a child who remains in the streets and or tribal property areas within the Reservation

between curfew hours of 10:00 p.m. and ending at 6:00 a.m. without the effective consent of the parent, guardian or custodian.

- (B) He is a parent, guardian or custodian of a child and knowingly permits or by insufficient control allows the child to remain in any streets and or tribal property areas within the Reservation during curfew hours;
- (C) He is a parent of a child and knowingly fails to respond within two hours of notification by any law enforcement official or tribal official to take custody of a child taken into protective care for violation of this section.

Section 4.4.051 Exceptions

A child shall not be considered to be in violation of the curfew provisions, where the minor was:

- (1) Accompanied by the child's parent, guardian, or custodian
- (2) On an errand at the direction of the child's parent;
- (3) In a motor vehicle engaged in interstate travel;
- (4) Engaged in employment activity including but not limited to newspaper delivery;
- (5) Involved in an emergency in the sidewalk abutting the child's residence or abutting the neighbor's residence of the next door neighbor if there is no complaint about the child's presence;
- (6) Attending an official school, civic or religious activity or returning home from such activities.

Section 4.4.052 Civil Penalty

An infraction under this Section is a Class C civil infraction.

Section 4.4.053 Definitions

As used in this section:

"Curfew hours" means the period beginning at 10:00 p.m. and ending at 6:00 a.m. on the following day. The time shall be determined by the prevailing standard of time, whether mountain standard or mountain daylight savings time, generally observed at that hour by the public in El Paso, County, Texas.

"Child" means a person who is under eighteen (18) years of age.

"Remain" means to linger, loiter or stay unnecessarily upon the tribal public areas within the Reservation, including congregating groups of minors in which the streets are not being used for ordinary purposes of passage or travel, or failure to leave premises when requested to do so by Tribal law enforcement member.

Section 4.4.060 TERRORISTIC THREAT

A person commits a civil infraction if he threatens to harm any person or property with intent to:

- (A) Cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies;
- (B) Place any person in fear of imminent serious bodily injury or death;
- (C) Prevent or interrupt the occupation or use of a building; room; place of assembly; place to which the public has access; place of employment or occupation; aircraft, automobile, or other form of

conveyance; or other public place;

- (D) Cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service;
- (E) Place the public or a substantial group of the public in fear of serious bodily injury or death; or
- (F) Influence the conduct or activities of a branch or agency of the YDSP Tribal Government, federal government, the state, or a political subdivision of the state.

Section 4.4.061 Civil Penalty

A civil infraction under **subsection (A) or (B)** is a Class B civil infraction, unless the infraction under **subsection (B)** is committed against a member of the person's family or household or otherwise constitutes family violence or if the offense is committed against a public servant, in which case it is a Class A civil infraction.

An offense under **subsection (C)** is a Class B civil infraction unless the actor causes pecuniary loss of \$1,500 or more to the owner of the building, room, place, or conveyance, in which case it becomes a Class A civil infraction.

An offense under **subsection (D), (E) or (F)** is a Class A civil infraction.

Section 4.4.062 Definitions

As used in this section:

"Family" means individuals related by consanguinity or affinity, spouses, former spouses, common-law spouses, domestic partners, individuals involved in dating relationships, parents, grandparents, children, siblings, step-parents, step-children, step-siblings, cousins, aunts, uncles, adult persons or emancipated minors presently residing together or who have a child in common regardless of whether they have been married at any time.

"Family violence" means:

- (A) An act by a member of a family against another member of the family that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;
- (B) Abuse by a member of a family toward a child of the family.

"Household" means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.

The amount of pecuniary loss under **subsection (C)** is the amount of economic loss suffered by the owner of the building, room, place, or conveyance as a result of the prevention or interruption of the occupation or use of the building, room, place, or conveyance.

Section 4.4.070 DEADLY CONDUCT

A person commits infraction under this section if:

- (A) He recklessly engages in conduct that places another in imminent danger of serious bodily injury or death; or
- (B) He knowingly discharges a firearm at or in the direction of:

- (1) One or more individuals; or
- (2) A habitation, building, or vehicle; and
- (3) Is reckless as to whether the habitation, building, or vehicle is occupied.

Recklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another whether or not the actor believed the firearm to be loaded.

Section 4.4.071 Civil Penalty

Any infraction under this Section is a Class A civil infraction.

Section 4.4.072 Definitions

For purposes of this section:

"**Building**" means a structure with a roof and walls.

"**Habitation**" means a dwelling, residence or abode, a place in which to live, a house or a home.

"**Vehicle**" means a thing used for transporting people or goods, especially on land, such as a car, truck, van or bus.

Section 4.4.080 BURGLARY

A person commits a civil infraction under this Section if:

- (A) He enters a habitation, a building, or any portion thereof not then open to the public with intent to commit theft or assault; or
- (B) Remains concealed in a habitation, a building, or any portion thereof with intent to commit theft or an assault; or
- (C) Enters a habitation, a building or any portion thereof and commits or attempts to commit theft or an assault.

Section 4.4.081 Civil Penalty

An infraction under this Section is a Class A civil infraction.

Section 4.4.082 Definitions

For purposes of this section:

"**Enter**" means to intrude or go into a habitation, building or any portion thereof that is not owned by the actor and for which he has no right of occupation.

Section 4.4.090 BURGLARY OF VEHICLES

A person commits civil infraction under this Section if

- (A) He breaks into or enters a vehicle or any part of a vehicle with intent to commit any felony or theft without the effective consent of the owner.

Section 4.4.091 Civil Penalty

An under this section is a Class A civil infraction.

Section 4.4.092 Definitions

For purposes of this section:

"Enter" means to intrude or go into a vehicle that is not owned by the actor.

PART 5

Civil Infractions Against Tribal Government

Section 4.5.010 DISRUPTING TRIBAL MEETING, GOVERNMENTAL OR TRIBAL TRADITIONAL RELIGIOUS FUNCTION

A person commits the civil infraction of Disrupting Tribal Meeting, Governmental or Tribal Traditional Religious Function if he:

- (A) Conducts himself in a manner intended to prevent or disrupt a lawful meeting held in any tribal building or facility owned or controlled by the Tribe, or during a tribal procession or religious function wherever held; or
- (B) Refuses or fails to leave any such tribal building or facility upon being requested to do so by any tribal official charged with maintaining order in such tribal building or facility; or
- (C) Willfully denies any tribal official, tribal employee or member of the tribal community the lawful right of such person to enter, to use the facilities, or to leave any such tribal building or facility; or
- (D) At or in any such tribal building or facility willfully impedes any tribal official or employee in the lawful performance of his duties or activities through the use of restraint, coercion, intimidation or by force and violence or threat thereof; or
- (E) At any meeting or session conducted by any tribal religious leader, judicial, Tribal Council, administrative body or tribal official, held in any tribal building or facility; through the use of restraint, coercion, intimidation or by force and violence or threat thereof; willfully impedes, disrupts, or hinders the normal proceedings of such a meeting or session by any act of intrusion into the chamber or other areas designated for the use of the body or official to conduct such a meeting.

Section 4.5.011 Civil Penalty

An infraction under this section is a Class C civil infraction unless committed under **subsection (D)** or at a tribal religious function or tribal elections in which event it is a Class B civil infraction.

Section 4.5.012 Definitions

As used in this section

"Coercion" means threat, however communicated:

- (A) To inflict bodily injury in the future on the person threatened or another;
- (B) To expose a person to hatred, contempt, or ridicule;
- (C) To take or withhold action as a public servant, or to cause a public servant to take or withhold action.

"Disrupt" means to deliberately interfere with proceedings in a manner calculated to hinder, or obstruct proceedings and continue to do so after being asked to refrain from such conduct by a tribal official. This does not include inquiring of tribal governmental or tribal finances in an orderly manner.

Nothing in this code shall be applied to deny the free exercise of religion or to abridge the freedom of speech, of the press, or the right of the people peaceable to assemble and to petition for redress of grievances. (As per 25 U.S.C. section 1301 - 1303. Constitutional Rights of Indians. (The Indian Civil Rights Act)) Ysleta del Sur Pueblo must allow for an open discussion at all tribal meetings where tribal members can address issues and concerns.

Section 4.5.020 INTERFERING WITH LAWFUL ARREST OR RESISTING ARREST

A person commits the civil infraction of Interfering with Lawful Arrest or Resisting Arrest if by force, violence or other means, if he:

- (A) Interferes, hinders or resists any law enforcement Officer or Tribal Official in the performance of his official duties; or
- (B) Flees from any Law Enforcement Officer or Tribal Official who is attempting to lawfully arrest or detain him; or
- (C) Assists another to avoid a lawful arrest or harbors a fugitive.

Section 4.5.021 Civil Penalty

An infraction under this section is a Class B civil infraction unless the actor introduces a weapon in which event it is a Class A civil infraction.

Section 4.5.022 Definitions

As used in this section

"Arrest" means a person placed under restraint or taken into custody by any person exercising lawful authority.

"Hinder" means to obstruct or impede.

"Resist" means the act of avoiding arrest by means of standing against, obstructing or opposing any Law Enforcement Officer or Tribal Official.

Section 4.5.030 VIOLATION OF A TRIBAL ORDINANCE

A person commits the civil infraction of Violation of a Tribal Ordinance if he violates a Tribal Ordinance or Resolution of the Ysleta del Sur Pueblo designed to preserve the peace and welfare of the Pueblo or if he aids, abets, commands, or counsels another to violate a Tribal Ordinance or Resolution.

Section 4.5.031 Civil Penalty

An infraction under this section is an assessment as provided in the ordinance or resolution violated unless such ordinance or resolution does not contain a penalty, in which case it becomes a Class C civil infraction.

Section 4.5.032 Definitions

As used in this section:

"Ordinance" means a permanent law established by the Tribal Council prescribing general and uniform rules of conduct relating to the affairs of the Ysleta del Sur Pueblo.

"Resolution" means a formal expression of the opinion or will of the Tribal Council or any authorized administrative tribal agency, adopted through vote by that official body and authorized by Tribal Council.

Section 4.5.040 OFFICIAL MISCONDUCT

A tribal official commits the civil infraction of Official Misconduct, if with intent to obtain a benefit or with intent to harm or defraud another, if he:

- (A) Exceeds the power of his office;
- (B) Fails to act in the face of an affirmative duty to act;
- (C) Violates a law, policy or procedure relating to the tribal official's office or employment; or
- (D) Misuses tribal government property, services, personnel, or any other thing of value belonging to the YDSP that has come into the tribal official's custody or possession by virtue of the tribal official's office or employment.
- (E) Takes advantage of tribal opportunity without full disclosure to and permission from Tribal Council as set out in a duly adopted resolution.

Section 4.5.041 Civil Penalty

An infraction under this section shall be held upon the discretion of the judge with a civil assessment of no less than \$250 and not to exceed \$5,000.

Section 4.5.042 Definitions

As used in this section

"Benefit" means anything reasonably regarded as economic gain or advantage including any other person in whose welfare the beneficiary has interest in.

Section 4.5.050 INTERFERENCE WITH POLICE SERVICE ANIMALS

A person commits the civil infraction of Interference with Police Service Animals if the person recklessly:

- (A) Taunts, torments, or strikes a police service animal;
- (B) Throws an object or substance at a police service animal;
- (C) Interferes with or obstructs a police service animal or interferes with or obstructs the handler or rider of a police service animal in a manner that:
 - (1) inhibits or restricts the handler's or rider's control of the animal; or
 - (2) deprives the handler or rider of control of the animal;
- (D) Releases a police service animal from its area of control;
- (E) Enters the area of control of a police service animal without the effective consent of the handler or rider, including placing food or any other object or substance into that area;
- (F) Injures or kills a police service animal; or
- (G) Engages in conduct likely to injure or kill a police service animal, including administering or setting a poison, trap, or any other object or substance.

Section 4.5.051 Civil Penalty

An infraction under this section is a:

Class C civil infraction if committed under subsection **(A) and (B)**;
Class B civil infraction if committed under subsection **(C), (D), or (E)**; or
Class A civil infraction if committed **under subsection (F) and (G)**.

Section 4.5.052 Definitions

As used in this section

"Area of control" includes a vehicle, trailer, kennel, pen, or yard.

"Handler or rider" means a peace officer, corrections officer, jailer or tribal official who is specially trained to use a police service animal for law enforcement or investigative purposes.

"Police service animal" means a dog, horse, or other domesticated animal that is specially trained for use by a handler or rider.

Section 4.5.060 UNLAWFUL RESTRAINT OF A PUBLIC SERVANT

A person commits a civil under this Section if:

- (A) The actor restrains an individual the actor knows is a public servant while the public servant is lawfully discharging an official duty; or
- (B) The actor restrains an individual the actor knows is a public servant in retaliation or on account of an exercise of official power or performance of an official duty as a public servant.

Section 4.5.061 Civil Penalty

An infraction under this Section is a Class A civil infraction.

Section 4.5.070 INTERFERENCE WITH EXECUTION AND SERVICE OF CIVIL PROCESS

A person commits infraction under this Section if:

- (A) He intentionally or knowingly by words or physical action prevents or interferes with the execution and service of civil process in a court case; or
- (B) He intentionally or knowingly avoids service and execution of civil process in a court case.

Section 4.5.071 Civil Penalty

An infraction under this Section is a Class C civil infraction.

PART 6

Civil Infractions Against the Person

Section 4.6.010 ASSAULT OR AGGRAVATED ASSAULT

A person commits the civil infraction of Assault if

- (A) Causes bodily injury to another; or
- (B) Causes serious bodily injury to another; or
- (C) Threatens another with imminent bodily injury; or
- (D) Causes physical contact with another when the person knows or should reasonably believe that the other person will regard the contact as offensive or provocative; or
- (E) Uses or exhibits a weapon during the commission of the assault; or
- (F) Forcibly assaults, resists, opposes, prevents, impedes, intimidates, or interferes with any authorized tribal law enforcement official lawfully discharging an official duty.

4.6.011 Civil Penalty

An infraction committed under this section is:

Class B Civil Infraction if committed under **subsection(s) (A), (C), OR (D)**; or
Class A Civil Infraction if committed under **subsection(s) (B), (E) or (F)**.

4.6.012 Definitions

As used in this section.

"Assault" as used in this section incorporates common law assault, common law battery and/or common law assault and battery.

"Bodily Injury" means:

- (1) a cut, abrasion, bruise or burn;
- (2) physical pain;
- (3) illness;
- (4) impairment of a function of a bodily member, organ, or mental facility; or
- (5) any other injury to the body, no matter how temporary.

"Serious Bodily Injury" means bodily injury, which involves:

- (1) a substantial risk of death;
- (2) extreme physical pain or disfigurement or
- (3) protracted loss or impairment of the function of a bodily member, organ, or mental facility.

Section 4.6.020 HARASSMENT

A person commits the civil infraction of Harassment if, with intent to harass, annoy, alarm, abuse, torment or embarrass another, he:

- (A) Initiates communication by telephone or in writing and in the course of the communication makes a comment, request, suggestion or proposal that is obscene or false;
- (B) Threatens, by telephone or in writing, in a manner reasonably likely to alarm the person receiving the threat, to inflict serious injury against the person, a member of his family, or his property;
- (C) Conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyer to be false, that another person has suffered death or serious bodily injury;
- (D) Causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass or offend another;
- (E) Knowingly permits a telephone under his control to be used by a person to commit an infraction under this section;
- (F) Intentionally subjects another to sexual harassment;
- (G) Intentionally stalks another; or
- (H) Commits any of the above mentioned subsections towards the Tribal Police Department or Tribal Police Department member.

Section 4.6.021 Civil Penalty

An infraction committed under this section is a Class C Civil infraction if committed under **subsection(s) (A) and (D)**. **Subsection (E)** is also a Class C infraction unless it includes **subsection (C)** in which case it becomes a Class infraction. Class B Civil Infraction if committed under **subsection(s) (F)**; or Class A Civil Infraction if committed under **subsection(s) (B), (C), or (G)**.

Section 4.6.022 Definitions

As used in this section.

"Obscene" means containing a patently offensive description of or a solicitation to commit an ultimate sex act including, but not limited to, sexual intercourse, masturbation, cunnilingus, fellatio, or anilingus, or a description of an excretory function.

"Stalking" means that on more than one occasion a person engages in conduct directed specifically toward another person, including following that person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass that person.

"Sexual Harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

Section 4.6.030 OBSTRUCTION OR RETALIATION

A person commits a civil infraction if he intentionally or knowingly harms or threatens to harm another person if the actor:

- (A) Retaliates for or on account of the service or status of another as a:
 - (1) tribal official, public servant, witness, prospective witness, or informant; or
 - (2) tribal official, person who has reported or who the actor knows intends to report the occurrence of a crime; or

- (B) Prevents or delays the service of another as a:
 - (1) tribal official, public servant, witness, prospective witness, or informant; or
 - (2) person who has reported or who the actor knows intends to report the occurrence of a crime; or

- (C) Retaliates against another for filing charges against the actor

Section 4.6.031 Civil Penalty

An infraction under this section is a Class A civil infraction.

Section 4.6.032 Definitions

As used in this section:

"Honorably retired peace officer" means a peace officer who:

- (A) Did not retire in lieu of any disciplinary action;

- (B) Was eligible to retire from a law enforcement agency or was ineligible to retire only as a result of an injury received in the course of the officer's employment with the agency; and

- (C) Is entitled to receive a pension or annuity for service as a law enforcement officer or is not entitled to receive a pension or annuity only because the law enforcement agency that employed the officer does not offer a pension or annuity to its employees.

"Informant" means a person who has communicated information to the government in connection with any governmental function.

"Public servant" includes an honorably retired peace officer.

Section 4.6.040 ENDANGERMENT OF A CHILD

A person commits the civil infraction of endangerment of a child if he abuses or neglects the child or otherwise treats or places the child in a circumstance contrary to his safety and welfare.

Section 4.6.041 Civil Penalty

An infraction under this section is a Class A civil infraction.

Section 4.6.042 Failure to Act

Any person who fails to act upon known Endangerment of a Child shall be liable to the YDSP and will be sanctioned by the Tribal Court for failure to act. The person(s) accused of having failed to act shall be

allowed a civil hearing before the court to answer for their failure to act. Sanctioning by this court will not prohibit any further sanctions by the individual department or YDSP acting in an administrative function.

Section 4.6.043 POSSESSION OR PROMOTION OF CHILD PORNOGRAPHY

A person commits u a civil infraction under this Section if:

- (A)The person knowingly or intentionally possesses visual material that visually depicts a child younger than eighteen (18) years of age at the time the image of the child was made who is engaging in sexual conduct; and
- (B)The person knows that the material depicts the child as described by Subsection (A).

Section 4.6.044 Civil Penalty

An infraction under this section is a Class A civil infraction.

Affirmative Defenses under this Section are:

- (1) the actor was the legally married spouse of the child at the time of the infraction;
- (2) the conduct was for a bona fide educational, medical, psychological, psychiatric, judicial, law enforcement, or legislative purpose.

A person who possesses visual material that contains six (6) or more visual depictions of a child as described by this Section is presumed to possess the material with the intent to promote the material.

Definitions used in this Section:

"Abuse" includes the following acts or omissions:

- (A) By any person causing a mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- (B) By any person causing the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- (C) By any person responsible for a child's care, custody, or welfare permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- (D) By any person causing physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
- (E) Failure by any person responsible for a child's care, custody, or welfare to make a reasonable effort to prevent sexual conduct harmful to a child;
- (F) Sexual conduct by any person harmful to a child's mental, emotional, or physical welfare;
- (G) Failure by any person responsible for a child's care, custody, or welfare to make a reasonable

effort to prevent sexual conduct harmful to a child;

- (H) By any person compelling or encouraging the child to engage in sexual conduct;
- (I) By any person causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene or pornographic; or,
- (J) By any person doing any other act that tends to debase or injure the morals, health or welfare of a child including, but not limited to supplying or encouraging a child to use alcohol, controlled substances, or inhalants; permitting a child to enter or remain in any house, building, or other place where alcohol, controlled substances, or inhalants are kept, consumed, or sold; encouraging or permitting a child to enter or remain in any house, building or other place where prostitutes, gamblers, or thieves are permitted to enter and ply their trade; encouraging or permitting a child to associate with thieves and immoral persons; encouraging or assisting the child in any criminal act; and encouraging or causing a child to leave home or the custody of his parents, guardians, or persons standing in lieu of his parents or guardians without first receiving their consent or against their will.

"Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person.

"Neglect" includes:

- (A) The leaving of a child by any person responsible for a child's care, custody, or welfare in a situation where the child would be exposed to a substantial risk of mental or physical harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;
- (B) The following acts or omissions:
 - (1) by any person placing a child in a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;
 - (2) by any person responsible for a child's care, custody, or welfare failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;
 - (3) by any person responsible for a child's care, custody, or welfare failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
 - (4) by any person responsible for a child's care, custody, or welfare failing to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused; or
 - (5) by any person responsible for a child's care, custody, or welfare failing without good cause to ensure that the child attends school in accordance with the rules of the school district in which the child is enrolled;
 - (6) by any person placing a child in a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child;

- (7) by any person responsible for a child's care, custody, or welfare failing to remove the child from a situation in which the child would be exposed to a substantial risk of harmful sexual conduct; or
- (C) The failure by the person responsible for the child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

"Obscene" means material or a performance that:

- (A) The average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;
- (B) Depicts or describes:
- (1) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or
 - (2) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and
- (C) Taken as a whole, lacks serious literary, artistic, political, and scientific value.

"Person responsible for a child's care, custody, or welfare" means a person who traditionally is responsible for a child's care, custody, or welfare, including among others:

- (A) A parent, guardian, managing or possessory conservator, or foster parent of the child;
- (B) A member of the child's family or household; and
- (C) A person with whom the child's parent cohabits.

"Sexual contact" means any touching of the anus, breast, or any part of the genitalia of another person with intent to arouse or gratify the sexual desire of any person.

"Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd/nude exhibition of the genitals and/or the anus of the child or any portion of the female breast below the top of the areola that has the effect of arousing sexual desire or interest in the viewer.

"Sexual Intercourse" means any penetration of the female sex organ by the male sex organ.

"Promote" means to manufacture, issue, sell, give, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.

"Visual material" means:

- (1) any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

- (2) any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

Section 4.6.050 INJURY TO A CHILD, ELDER OR DISABLED PERSON

A person commits an infraction if he intentionally, knowingly, recklessly, or with negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child, elderly individual, or disabled individual:

- (A) Serious bodily injury;
- (B) Serious mental deficiency, impairment, or injury; or
- (C) Bodily injury.

Section 4.6.051 Exceptions

An omission that causes a condition described by Subsections (A) through (C) is conduct constituting an offense under this section if:

- (A) The actor has a legal or statutory duty to act; or
- (B) The actor has assumed care, custody, or control of a child, elderly individual, or disabled individual.

Section 4.6.052 Civil Penalty

An infraction under this section is a Class A civil infraction.

Section 4.6.053 Definitions

As used in this section:

"**Child**" means a person 17 years of age or younger.

"**Elderly individual**" means a person 65 years of age or older.

"**Disabled individual**" means a person older than 14 years of age who by reason of age or physical or mental disease, defect, or injury is substantially unable to protect himself from harm or to provide food, shelter, or medical care for himself.

Section 4.6.054 ASSUMPTION OF CARE

The actor has assumed care, custody, or control if he has by act, words, or course of conduct acted so as to cause a reasonable person to conclude that he has accepted responsibility for protection, food, shelter, and medical care for a child, elderly individual, or disabled individual.

Section 4.6.060 ABANDONING OR ENDANGERING A CHILD

A person commits an infraction if;

- (A) Having custody, care, or control of a child younger than 15 years, he intentionally abandons the child in any place under circumstances that expose the child to an unreasonable risk of harm.

- (B) He intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child younger than 15 years in imminent danger of death, bodily injury, or physical or mental impairment.

Section 4.6.061 Civil Penalty

An infraction under this section is a Class A civil infraction.

Section 4.6.062 Definitions

As used in this section:

"Abandon" means to leave a child in any place without providing reasonable and necessary care for the child, under circumstances under which no reasonable, similarly situated adult would leave a child of that age and ability.

Section 4.6.070 UNLAWFUL RESTRAINT

A person commits a civil infraction if he intentionally or knowingly restrains another person in circumstances that do not fall under the Exceptions and/or without an affirmative defense when:

- (A) The actor recklessly exposes the restrained person to a substantial risk of serious bodily injury; or
- (B) The actor restrains any other person when the actor is in lawful custody.

Section 4.6.071 Exceptions

- (A) It is an exception under this Section if the restrained person is a public servant or tribal official, which is a Class A civil infraction covered under Article IV, Peace Code, Part 5, Civil Infraction Against Tribal Government.
- (B) It is no offense to detain or move another under this Section when it is for the purpose of effecting a lawful arrest or detaining an individual lawfully arrested.

Section 4.6.072 Affirmative Defenses

It is an affirmative defense to prosecution under this Section if:

- (1) the restrained person is temporarily restrained in emergency circumstances in order to prevent harm to the restrained person or to others by the conduct of the restrained person.
- (2) the person restrained is a child younger than ten (10) years of age and was restrained properly for disciplinary and/or safety purposes by a parent, guardian or custodian; and
 - (a) the actor does not restrain the child by excessive force, intimidation, violence or deception.
- (3) the person restrained is a child younger than ten (10) years of age and was restrained properly by a parent, guardian or custodian with the sole intent of assuming lawful control of the child; and
 - (a) the actor does not restrain the child by excessive force, intimidation, violence or deception.

Section 4.6.073 Civil Penalty

An infraction under this Section is a Class C civil infraction if the actor causes no physical harm to the restrained individual and the individual is temporarily restrained for a reasonable period of time.

An infraction under this Section is a Class B civil infraction if the actor causes psychological distress and/or emotional harm to the restrained individual.

An infraction under this Section is a Class A civil infraction if the actor causes physical harm to the restrained individual and/or the individual is restrained for an unreasonable period of time.

Section 4.6.074 Definitions

“Unlawful restraint” means that the actor physically and unlawfully prohibits a person’s physical freedom and/or movement.

“Physical harm” means that the actor recklessly physically injured the restrained person through excessive force, intimidation or violence.

“Psychological distress” means that the actor recklessly caused the restrained person to become intimidated, fearful, traumatized and/or experience shock.

“Emotional harm” means that the actor recklessly caused the restrained person to become anxious and apprehensive for their own safety and well-being.

Section 4.6.080 FALSE IMPRISONMENT

A person commits a civil infraction under this Section if:

- (A) The actor willfully detains the person within a bounded area and will not allow him leave under his own will; and
- (B) The actor detains the person without the detained person’s consent; and
- (C) The actor restrains the person without authority of law.

Section 4.6.081 Exceptions

- (A) It is an exception under this Section if the restrained person is detained by a shopkeeper in a bounded area for a reasonable period of time due to reasonable suspicion of shoplifting; and
- (B) The shopkeeper immediately contacts tribal law enforcement to report suspicion of shoplifting; and
- (C) The shopkeeper immediately informs tribal law enforcement of the temporary detention of the individual in a bounded area for purposes of turning the detained person over to law enforcement; and
- (D) The shopkeeper immediately turns the detained person over to law enforcement upon their arrival.

Section 4.6.082 Civil Penalty

An infraction under this Section is a Class A civil infraction.

Section 4.6.090 FAILURE TO IDENTIFY

- (A) A person commits civil infraction if he intentionally refuses to give his name, residence address, or date of birth to a requesting peace officer who has:

- (1) lawfully arrested the person;
- (2) lawfully detained the person; or
- (3) requested the information from a person that the peace officer has good cause to believe is a witness to a civil infraction.

Section 4.6.091 Civil Penalty

A civil infraction under this section is a Class C civil infraction.

Section 4.6.100 FALSE PERSONATION

(A) A person commits a civil infraction if he intentionally gives a false or fictitious name, residence address, or date of birth to a peace officer who has:

- (1) lawfully arrested the person;
- (2) lawfully detained the person; or
- (3) requested the information from a person that the peace officer has good cause to believe is a witness to a civil infraction.

Section 4.6.101 Civil Penalty

An infraction under this Section is a Class B civil infraction.

Section 4.6.110 TAMPERING WITH OR INTIMIDATION OF WITNESS

A person commits a civil infraction if, with intent to influence the witness, he offers, confers, or agrees to confer any benefit on a witness or prospective witness in an official proceeding or coerces, threatens to harm, or does harm a witness or prospective witness in an official proceeding:

- (1) to testify falsely;
- (2) to withhold any testimony, information, document, or thing;
- (3) to elude legal process summoning him to testify or supply evidence;
- (4) to absent himself from an official proceeding to which he has been legally summoned; or
- (5) to abstain from, discontinue, or delay the prosecution of another.

Section 4.6.111 Civil Penalty

An infraction under this Section is a Class A civil infraction.

Section 4.6.112 Definitions

“**Witness**” means someone who has, who claims to have, or is thought, by someone with authority to compel testimony, to have knowledge relevant to an event or other matter of interest. A witness is someone who, either voluntarily or under compulsion, provides testimonial evidence, either oral or written,

of what he or she knows or claims to know about the matter before some official authorized to take such testimony.

Section 4.6.120 FALSE ALARM OR REPORT

A person commits civil infraction if he knowingly initiates, communicates or circulates a report of a present, past, or future bombing, fire, offense, or other emergency that he knows is false or baseless and that would ordinarily:

- (1) cause action by an official or volunteer agency organized to deal with emergencies; or
- (2) place a person in fear of imminent serious bodily injury; or
- (3) prevent or interrupt the occupation of a building, room, place of assembly, place to which the public has access, or aircraft, automobile, or other mode of conveyance.

Section 4.6.121 Civil Penalty

An infraction under this section is a Class B civil infraction.

Section 4.6.130 INTERFERENCE WITH EMERGENCY CALL

- (A) An individual commits civil infraction if the individual knowingly prevents or interferes with another individual's ability to place an emergency telephone call or to request assistance in an emergency from a law enforcement agency, medical facility, or other agency or entity the primary purpose of which is to provide for the safety of individuals.
- (B) An individual commits a civil infraction if the individual recklessly renders unusable a telephone that would otherwise be used by another individual to place an emergency telephone call or to request assistance in an emergency from a law enforcement agency, medical facility, or other agency or entity the primary purpose of which is to provide for the safety of individuals. Engaging in a denial of access pattern of conduct by placing repeated or harassing or baseless calls to an emergency telephone number constitutes recklessly rendering a telephone unusable.

Section 4.6.131 Civil Penalty

An infraction under this Section is a Class A civil infraction.

Section 4.6.140 ROBBERY

A person commits a civil infraction under this Section if:

- (A) He unlawfully takes or tries to take something of value by force or threat of force or by putting the victim in fear; or
- (B) He unlawfully takes or tries to take something of value using a weapon; or
- (C) He unlawfully takes or tries to take something of value using a deadly weapon or what appears to be a deadly weapon.

Section 4.6.141 Civil Penalty

An infraction under this Section is a Class A civil infraction and can involve not only the civil penalties available under law but may also include restitution and/or forfeiture of personal property to the victim at the discretion of the court.

Section 4.6.142 Definitions

As used in this Section:

“**Weapon**” is any device used in order to inflict damage or harm to living beings, structures or systems.

“**Deadly weapon**” is any device used in order to eradicate, exterminate or kill living beings.

Section 4.6.150 VIOLATION OF PROTECTIVE ORDER OR MAGISTRATE'S ORDER

A person commits a civil infraction under this Section if:

(A) Violation of a protective order or magistrate's order issued under YDSP Article 7, Domestic Violence Code or by another jurisdiction, the person knowingly or intentionally:

- (1) commits family violence or an act in furtherance of an offense under Article 7; or
- (2) communicates:
 - (a) directly with a protected individual or a member of the family or household of the protected individual without court authorization;
 - (b) through third party person to a protected individual or a member of the family or household of the protected individual without court authorization; or
 - (c) in any manner with the protected individual or a member of the family or household except through the person's attorney or person appointed by the court;
- (3) goes to or near any of the following places as specifically described in the order:
 - (a) the residence or place of employment or business of a protected individual or a member of the family or household of the protected individual; or
 - (b) any child care facility, residence, or school where a child protected by the order normally resides or attends; or
- (4) possesses a firearm.

Section 4.6.151 Civil Penalty

An infraction under this Section is a Class A civil infraction.

If conduct constituting an offense under this Section also constitutes an offense under another Section of this Code, the actor may be prosecuted under either Section or under both Sections. Reconciliatory actions or agreements made by persons affected by a protective order do not affect the validity of the order or the duty of a peace officer to enforce this Section.

A peace officer investigating conduct that may constitute an offense under this Section for a violation of an order shall not arrest a person protected by that order for a violation of that order.

It is not a defense to prosecution under this Section that certain information has been excluded from an order to which this Section applies.

Aggravating circumstances exist if the actor has previously been convicted under this Section two (2) or more times or has violated the protective order by committing an assault or the offense of stalking, in which event the prosecution will not only prosecute tribally but will also refer to the Federal authorities for prosecution as an habitual family violence offender.

Section 4.6.160 ONLINE SOLICITATION OF A CHILD

A person who is seventeen (17) years of age or older commits a civil infraction if, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service he:

- (A) with the intent to arouse or gratify the sexual desire of any person the person intentionally:
 - (1) communicates in a sexually explicit manner with a minor; or
 - (2) distributes sexually explicit material to a minor; or
- (B) knowingly solicits a minor to meet another person and/or the actor with the intent that the minor will engage in sexual contact, sexual intercourse, or deviate sexual intercourse with the actor or another person;

It is not a defense to prosecution under Section that:

- (1) the meeting did not occur;
- (2) the actor did not intend for the meeting to occur; or
- (3) the actor was engaged in a fantasy at the time of commission of the offense.

Affirmative Defenses are available under this Section if, at the time the conduct described in this section, the actor was legally married to the minor.

Section 4.6.161 Civil Penalty

An infraction under this Section is a Class A civil infraction.

Section 4.6.170 ENGAGING IN PROSTITUTION

A person who is twenty (20) years of age or older commits a civil infraction if he knowingly:

- (A) Offers to engage, agrees to engage, or engages in sexual conduct for a fee; or
- (B) Solicits another in a public place to engage with him in sexual conduct for a fee.

It is not a defense to prosecution under Section that:

- (1) the fee did not exchange; or
- (2) sexual conduct did not actually occur.

Section 4.6.171 Affirmative Defenses – Safe Harbor for Victims

It is an Affirmative Defense under this Section if at the time the conduct described by Subsections (A) or (B) was committed:

- (1) the actor was the age of nineteen (19) or younger, which raises a presumption that the actor was a victim of conduct that constitutes an offense under this Article;
- (2) the court may direct that the Department of Social Services or another qualified agency make a full evaluation concerning the actor, the actor's family and support system, the actor's environment and services available to assist the actor.

Section 4.6.172 Civil Penalty

An infraction under this Section is a Class B civil infraction, except in cases in which there has been one (1) or more previous conviction under this Section, in which case it is a Class A civil infraction.

Section 4.6.180 PROMOTING PROSTITUTION

A person who is twenty one (21) years of age or older acting as other than a prostitute receiving compensation for personally rendered prostitution services, commits a civil infraction if he knowingly:

- (A) Receives money or other property pursuant to an agreement to participate in the proceeds of prostitution; or
- (B) Solicits another to engage in sexual conduct with a third person for compensation; or
- (C) Owns, invests in, finances, controls, supervises, or manages a prostitution enterprise that benefits financially from prostitution.

It is not a defense to prosecution under Section that:

- (1) the fee did not exchange; or
- (2) sexual conduct did not actually occur.

Section 4.6.181 Affirmative Defenses – Safe Harbor for Victims

It is an Affirmative Defense under this Section if at the time the conduct described by Subsections (A) or (B) was committed:

- (1) the actor was the age of nineteen (19) or younger, which raises a presumption that the actor was a victim of conduct that constitutes an offense under this Article;
- (2) the Court may refer the juvenile's case to child protection and direct that the Department of Juvenile Services or another qualified agency make a full evaluation concerning the actor, the actor's family and support system, the actor's environment and services available to assist the actor.

Section 4.6.182 Civil Penalty

An infraction under this Section is a Class A civil infraction.

Section 4.6.190 SEX TRAFFICKING

A person who is twenty one (21) years of age or older commits a civil infraction under this Section if he knowingly:

- (A) Causes another by force, threat, or fraud to commit any commercial sex act(s); or

(B) Recruits, harbors, transports, provides or obtains a person for the purpose of a commercial sex act in which the sex act is:

(1) induced by force, fraud or coercion; or

(2) the person induced to perform such an act has not attained the age of twenty one (21) years;

(C) Causes by any means a minor younger than (21) years to commit prostitution, regardless of whether the actor knows the age of the minor at the time of commission of the offense.

It is not a defense to prosecution under Section that:

(1) the fee did not exchange; or

(2) sexual conduct did not actually occur.

Section 4.6.191 Affirmative Defenses – Safe Harbor for Victims

It is an Affirmative Defense under this Section if at the time the conduct described by Subsections (A) through (C) was committed:

(1) the actor was the age of nineteen (19) or younger, which raises a presumption that the actor was a victim of conduct that constitutes an offense under this Article;

(2) the court may direct that the Department of Juvenile Services or another qualified agency make a full evaluation concerning the actor, the actor's family and support system, the actor's environment and services available to assist the actor.

Section 4.6.192 Civil Penalty

An infraction under this Section is a Class A civil infraction.

Section 4.6.200 LABOR TRAFFICKING

A person who is twenty one (21) years of age or older commits a civil infraction under this Section if he knowingly:

(A) Recruits, harbors, transports, provides or obtains a person for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.

Section 4.6.201 Affirmative Defenses – Safe Harbor for Victims

It is an Affirmative Defense under this Section if at the time the conduct described by Subsections (A) through (C) was committed:

(1) the actor was the age of nineteen (19) or younger, which raises a presumption that the actor was a victim of conduct that constitutes an offense under this Article;

(2) the court may direct that the Department of Juvenile Services or another qualified agency make a full evaluation concerning the actor, the actor's family and support system, the actor's environment and services available to assist the actor.

Section 4.6.202 Civil Penalty

An infraction under this Section is a Class A civil infraction.

Section 4.6.210 SEXUAL ASSAULT

(A) A person commits an a civil infraction under this Section if the person:

- (1) intentionally or knowingly:
 - (a) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;
 - (b) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or
 - (c) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or
- (2) intentionally or knowingly:
 - (a) causes the penetration of the anus or sexual organ of a child by any means;
 - (b) causes the penetration of the mouth of a child by the sexual organ of the actor;
 - (c) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;
 - (d) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or
 - (e) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.

Section 4.6.211 LACK OF CONSENT

A sexual assault under Subsection (A)(1) is without the consent of the other person if:

- (1) the actor compels the other person to submit or participate by the use of physical force or violence;
- (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;
- (3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;
- (4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;
- (5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;
- (6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;
- (7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;
- (8) the actor is a public servant who coerces the other person to submit or participate;

- (9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;
- (10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or
- (11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are legally married to each other.

4.6.212 Affirmative Defenses

- (A) It is a defense to prosecution under Subsection (A)(2) that the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.
- (B) It is an affirmative defense to prosecution under Subsection (A)(2):
 - (1) that the actor was the spouse of the child at the time of the offense; or
 - (2) that:
 - (a) the actor was not more than three years older than the victim and at the time of the offense:
 - 1. was not required to register as a sex offender; or
 - 2. was not a person who had a reportable conviction or adjudication for an offense under this section; and
 - (b) the victim:
 - 1. was a child of 14 (fourteen) years of age or older; and
 - 2. was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married.

4.6.213 Definitions

In this section:

- (1) "Child" means a person younger than 18 years of age.
- (2) "Spouse" means a person who is legally married to another.
- (3) "Health care services provider" means:
 - (a) a licensed physician;
 - (b) a chiropractor;
 - (c) a physical therapist;
 - (d) a physician assistant; or
 - (e) a registered nurse, a vocational nurse, or an advanced practice nurse.
- (4) "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:
 - (a) licensed social worker;

- (b) chemical dependency counselor;
- (c) licensed professional counselor;
- (d) licensed marriage and family therapist;
- (e) member of the clergy;
- (f) psychologist offering psychological services; or
- (g) special officer for mental health assignment.

(5) "Employee of a facility" means a person who is an employee of a facility or any other person who provides services for a facility for compensation, including a contract laborer.

Section 4.6.214 Civil Penalty

An infraction under this Section is a Class A civil infraction.

**PART
7
Drinking & Drug Civil
Infractions**

Section 4.7.000 Definitions

For this part, the following definitions will apply:

- (A) **“Alcoholic beverage”** means alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.
- (B) **“Intoxication”** means not having the normal use of mental or physical facilities by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances or any other substance into the body.
- (C) **“Minor”** means a person who is less than twenty one (21) years of age.
- (D) **“Negligent”** or negligence means the failure of a person to do what a person of ordinary prudence would have done under similar circumstances.

Section 4.7.010 CHEMICAL INTOXICATION

A person commits the civil infraction of Chemical Intoxication if he:

- (A) Inhales, ingests, applies, uses, or possesses a substance containing a volatile chemical, abusable glue or aerosol paint with the intent to inhale, ingest, apply, or use the substance in a manner:
 - (1) contrary to directions for use, cautions, or warning appearing on a label of a container of the substance; and
 - (2) designed to:
 - (a) affect the person's central nervous system;
 - (b) create or induce a condition of intoxication, hallucination, or elation; or
 - (c) change, distort, or disturb the person's eyesight, thinking process, balance, or coordination.
- (B) Sells, offers for sale, delivers or gives to any person under the age of 18 years any volatile chemical, abusive glue or aerosol paint.

Section 4.7.011 Civil Penalty

An infraction under this code is subject to a Class B civil infraction unless it is committed under **subsection (B)** in which case it becomes a Class A civil infraction.

Section 4.7.012 Definitions

As used in this section.

"**Abusable glue or aerosol paint**" means glue or aerosol paint that is:

- (A) Packaged in a container holding a pint or less volume or less than two pounds by weight;
- (B) Labeled in accordance with the labeling requirements concerning precautions against inhalation established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 *et seq.*).

"**Aerosol Paint**" means any aerosolized paint product, including a clear or pigmented lacquer or finish.

"**Volatile Chemicals**" means volatile solvents of one of the following generic types: aromatics, alcohol's, keytones, esters, ethers, halogenated hydrocarbons, isocyanates, tetra, hydro furans, diethyl sulfates, alkyloitirles and elene oxides.

Section 4.7.020 ILLEGAL DRUGS

A person commits the Civil Infraction of Illegal Drugs if he:

- (A) Possesses or consumes; or
- (B) Manufactures or distributes or intends to distribute any of the following:
 - (1) dangerous drugs;
 - (2) any drug identified as a controlled substance;
 - (3) a narcotic drug;
 - (4) marihuana; or
 - (5) any drug paraphernalia;

4.7.021 Civil Penalty

An infraction committed under **subsection a** is a Class B civil infraction unless committed under **subsection b** in which case it becomes a Class A civil infraction.

4.7.022 Presumptions

Any person in possession of any amount of illegal drugs that is in more than one container or that exceeds 2 ounces for marihuana or 1 gram for any other drug shall be presumed to intend to distribute illegal drugs.

4.7.023 Definitions

As used in this section:

"**Controlled Substance**" means any drug or other substance under the provisions of Chapter 13, Title 21, Section 802, "Controlled Substance" of the United States Code.

"Dangerous Drug" means any drug that is included in Chapter 13, Title 21 Section 802, "Dangerous Drug" schedules I, II, III, IV, and V of the United States Code. The terms include a device or a drug that bears or is required to bear the legend:

- (1) Caution: federal law prohibits dispensing without prescription; or
- (2) Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

"Distribute" means the furnishing of or sale of a controlled substance or dangerous drug.

"Drug Paraphernalia" means any equipment, product, object or container used or intended for use to cultivate, plant, maintain, manufacture, package or store an illegal drug in violation of this section or inject, ingest, inhale or otherwise introduce an illegal drug into the human body in violation of this section, regardless of the material composition of the instrument used for such purposes. **"Marihuana"** means all parts of the plant Cannabis sativa L. whether growing or not; under the provisions of Chapter 13, Title 21, Section 802, "Marihuana" of the United States Code.

"Narcotic Drug" means any drug under the provision of Chapter 13, Title 21, Section 802, "Narcotic Drug" of the United States Code.

Section 4.7.030 PUBLIC INTOXICATION

A person commits the civil infraction of Public Intoxication if he appears intoxicated on Tribal Property to the degree that the person may endanger himself or another.

Section 4.7.031 EXCEPTIONS

It is an exception under this section if the alcohol or other substance was administered for therapeutic purposes and as part of the person's professional medical treatment by a licensed physician.

Section 4.7.032 CIVIL PENALTY

An infraction under this section is a Class B civil infraction unless the person committing the infraction is under the age of 21, in which case the infraction becomes a Class A civil infraction.

Section 4.7.040 PURCHASE/ATTEMPTED PURCHASE OF ALCOHOL BY A MINOR

A person under the age of twenty one (21) commits the civil infraction of Purchase/Attempted Purchase of Alcohol by a Minor if:

- (1) the minor purchases an alcoholic beverage; or
- (2) the minor makes an attempt to purchase an alcoholic beverage.

Section 4.7.041 CIVIL PENALTY

An infraction committed under this section is a Class B civil infraction.

Section 4.7.050 SALE OF ALCOHOL TO MINORS

A person commits a civil infraction if he sells alcohol to a minor.

Section 4.7.051 Exceptions

A person who sells a minor an alcoholic beverage does not commit an offense if the minor falsely represents himself to be twenty one (21) years old or older by displaying an apparently valid driver's license or an identification card issued by a state or national agency containing a physical description consistent with his appearance for the purpose of inducing the person to sell him an alcoholic beverage.

Section 4.7.052 CIVIL PENALTY

An infraction committed under this section is a Class A civil infraction.

Section 4.7.060 MINOR IN POSSESSION OF ALCOHOL

A person under the age of twenty one (21) commits the civil infraction of Minor in Possession of Alcohol if he or she is in possession of alcohol or an alcoholic beverage.

Section 4.7.061 CIVIL PENALTY

An infraction committed under this section is a Class B civil infraction.

SECTION 4.7.070 PURCHASE OF OR FURNISHING ALCOHOL TO A MINOR

A person commits the civil infraction of Purchase of Alcohol for a Minor; Furnishing Alcohol to a Minor if he purchases an alcoholic beverage for or gives or negligently makes available an alcoholic beverage to a minor.

Section 4.7.071 CIVIL PENALTY

An infraction committed under this section is a Class A civil infraction.

Section 4.7.080 MISREPRESENTATION OF AGE BY A MINOR

A minor commits the civil infraction of Misrepresentation of Age by a Minor if he falsely states that he is twenty-one 21 years of age or older or presents any document that indicates he is 21 years or older to a person engaged in selling or serving alcoholic beverages or to any law enforcement officer.

Section 4.7.081 CIVIL PENALTY

An infraction committed under this section is a Class B civil infraction.

PART 8

Health and Safety

Section 4.8.010 ANIMAL CONTROL

It is a civil infraction for any person owning or having charge, care or custody of any animal on the Pueblo's reservation to:

- (A) Allow the animal to run at large on the Reservation. That person shall keep such animal exclusively upon his own premises by means of physical restraint.
- (B) Keep any animal causing frequent or long continued noise that shall disturb the comfort and repose of any person of ordinary sensibility within the vicinity;
- (C) Keep any animal which deposits body waste upon, or destroys by chewing, scratching or digging property other than that of the owner of such animal;
- (D) To permit an animal to defecate upon tribal public property or upon the property of another.
- (E) To fail to have the animal properly collared at all times.

Section 4.8.011 Civil Penalty

An infraction under this section is a Class C Civil Infraction. A person in violation of the Animal Control Code may be required to remove the animal off Reservation premises at the discretion of the Court. An animal which is not properly collared shall be subject to immediate seizure and destruction without notice.

Section 4.8.012 Definitions

As used in this section.

"Animal" means any living animal except human beings and includes without limiting the generality thereof mammals, reptiles, birds and fish. When referring specifically to the control of rabies, "Animal" refers only to dogs, cats, and ferrets.

"Owner" means any person who owns, harbors, keeps or causes to be harbored or kept or has in his care, custody or control on or about his premises any animal.

"Properly Collared Animal" refers to a collar placed around the neck of a dog, cat, or ferret to which is affixed metal tags providing the person's then current contact information and proof that the animal has been vaccinated against rabies within the last 12 months.

Section 4.8.020 TOBACCO PROHIBITIONS

It is a civil infraction for any individual, entity, or organization:

- (A) To sell tobacco and/or tobacco products from or on the Tribe's reservation or its land other than the Pueblo itself acting by and through the Tribal Council;
- (B) Sell, offer for sale, deliver, or give to any person under the age of 18 years any tobacco or tobacco product.

Section 4.8.021 Civil Penalty

An infraction under this section is a Class C Civil Infraction unless committed under **subsection (B)** in which case it becomes a Class B Civil Infraction.

Section 4.8.03 PURCHASE/ATTEMPTED PURCHASE OF TOBACCO BY A CHILD

A person under the age of eighteen (18) commits the civil infraction of Purchase of or Attempted Purchase of Tobacco by a Child if:

- (A) The minor purchases a tobacco product; or
- (B) The minor makes an attempt to purchase a tobacco product.

Section 4.8.031 Civil Penalty

An infraction committed under this section is a Class C civil infraction.

Section 4.8.040 CHILD IN POSSESSION OF TOBACCO

A person under the age of eighteen (18) commits the civil infraction of Child in Possession of Tobacco if he or she is in possession of a tobacco product.

Section 4.8.041 Civil Penalty

An infraction committed under this section is a Class C civil infraction.

Section 4.8.050 MISREPRESENTATION OF AGE BY A CHILD

A child commits the civil infraction of Misrepresentation of Age by a Child if he falsely states that he is 18 years of age or older or presents any document that indicates he is 18 years or older to a person engaged in selling a tobacco product.

Section 4.8.051 Civil Penalty

An infraction committed under this section is a Class C civil infraction.

Section 4.8.060 CRUELTY TO ANIMALS

A person commits a civil infraction under this Section if he intentionally or knowingly:

- (A) Tortures an animal;
- (B) Fails unreasonably to provide necessary food, care, or shelter for an animal in the person's custody;
- (C) Abandons unreasonably an animal in the person's custody;

- (D) Transports or confines an animal in a harmful or cruel manner;
- (E) Kills, seriously injures, or administers poison to any animal belonging to any person without legal authority or the owner's explicit consent and without just reasoning;
- (F) Causes one animal to fight with another;
- (G) Uses the animal as a lure or bait in dog training or dog coursing;
- (H) Intentionally trips a horse;
- (I) Seriously overworks an animal; or
- (J) Injures any animal belonging to any person.

Section 4.8.061 Exceptions

It is an exception under this Section if the person was engaged in an authorized experiment for scientific research.

It is an exception under **subsection (E)** that the animal was discovered on the person's property in the act of or immediately after injuring or killing other animal(s) or person(s) and that the person killed or injured the animal at the time of this discovery.

It is an exception under this Section if the person had a reasonable fear of bodily injury to the person or to another by a dangerous animal.

It is an exception to the application of this Section that the conduct engaged in by the actor is a generally accepted and otherwise lawful:

- (A) Use of an animal if that use occurs solely for the purpose of:
 - (1) fishing, hunting, or trapping;
 - (2) slaughter for sustenance; or
 - (3) wildlife control as regulated by state and federal law; or
- (B) Animal husbandry or farming practice involving livestock.

Section 4.8.062 Civil Penalty

An infraction under sections (B), (C), (D) is a Class B civil infraction unless it is committed under subsections (A), (E), (F), (G), (H), (I) and (J) in which case it becomes a Class A civil infraction.

In its discretion, the Court may refer any person charged or convicted of the civil infraction of Cruelty to Animals to a psychological or psychiatric evaluation.

Section 4.8.063 Definitions

As used in this section:

"Abandon" includes abandoning an animal in the person's custody without making reasonable arrangements for assumption of custody by another person.

"**Animal**" means a domesticated living creature and wild living creature previously captured or not.

"**Cruel manner**" includes a manner that causes or permits unjustified or unwarranted pain or suffering.

"**Custody**" includes responsibility for the health, safety, and welfare of an animal subject to the person's care and control, regardless of ownership of the animal.

"**Necessary food, care, or shelter**" includes food, care, or shelter provided to the extent required to maintain the animal in a state of good health.

"**Torture**" means to inflict severe physical pain or punishment.

PART 9

Civil Infractions Against the Family

Section 4.9.010 LEAVING A CHILD IN A VEHICLE

A person commits a civil infraction under this section if he intentionally or knowingly leaves a child in a motor vehicle for longer than five minutes, knowing that the child is:

- (A) Younger than seven years of age; and
- (B) Not attended by an individual in the vehicle who is 14 years of age or older.

Section 4.9.011 Civil Penalty

An infraction under this section is a Class C civil infraction.

Section 4.9.020 AGREEMENT TO ABDUCT FROM CUSTODY

A person commits civil infraction under this section if the person agrees to abduct a child younger than 18 years of age by force, threat of force, misrepresentation, stealth, or unlawful entry, knowing that the child is under the care and control of a person having custody or physical possession of the child under a court order or under the care and control of another person who is exercising care and control with the consent of a person having custody or physical possession under a court order.

Section 4.9.021 Civil Penalty

An infraction under this section is a Class A civil infraction that requires immediate notification of the state police department from the jurisdiction where the offense occurred.

Section 4.9.030 ENTICING A CHILD

A person commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, he knowingly entices, persuades, or takes the child from the custody of the parent or guardian or person standing in the stead of the parent or guardian of such child.

Section 4.9.031 Civil Penalty

An infraction under this section is a Class B civil infraction, unless it is shown on the trial of the offense that the actor intended to commit a felony as defined by the state of Texas against the child, in which event an offense under this section is a Class A civil infraction that requires immediate notification of the state police department from the jurisdiction where the offense occurred.

Section 4.9.040 NONSUPPORT

A person commits an infraction under this section if the individual intentionally or knowingly fails to provide support for the individual's child younger than 18 years of age, or for the individual's child who is the subject of a court order requiring the individual to support the child.

Under this Section, liability may be found on the uncorroborated testimony of a party to the offense.

Section 4.9.041 Civil Penalty

An infraction under this Section is a Class A civil infraction.

Section 4.9.042 Definitions

As used in this Section:

"**Child**" includes a child born out of wedlock whose paternity has either been acknowledged by the actor or has been established in a civil suit under the Family Code or the law of another state.

Section 4.9.050 INTERFERENCE WITH RIGHTS OF GUARDIAN OF THE PERSON

(A) A person commits an infraction under this section if the person takes, retains, or conceals a ward when the person knows that the person's taking, retention, or concealment interferes with a possessory right with respect to the ward.

Section 4.9.051 Exceptions

This section does not apply to a governmental entity where the taking, retention, or concealment of the ward was authorized by Subtitle E, Title 5, Texas Family Code, Chapter 48, Texas Human Resources Code, or by the YDSP Youth Code or Domestic Violence Code.

Section 4.9.052 Civil Penalty

An infraction under this section is a Class B civil infraction.

Section 4.9.053 Definitions

As used in this section.

"**Possessory right**" means the right of a guardian of the person to have physical possession of a ward and to establish the ward's legal domicile.

"**Ward**" means a person for whom a guardian has been appointed by the court.

Section 4.9.060 HARBORING RUNAWAY CHILD

A person commits civil infraction if:

(A) He knowingly harbors a child; and

(B) He is negligent about whether the child:

(1) is younger than eighteen (18) years of age; and

(2) the child has escaped from the custody of a peace officer, a probation officer, the Texas Youth Council, or a detention facility for children, or is voluntarily absent from the child's home without the consent of the child's parent, guardian or custodian for a substantial length of time or without the intent to return.

Section 4.9.061 Defenses

It is a defense to prosecution under this section if:

- (1) the actor was related to the child within the second degree by consanguinity or affinity;; or
- (2) the actor notified:
 - (a) the person or agency from which the child escaped or a law enforcement agency of the presence of the child within twenty four (24) hours after discovering that the child had escaped from custody; or
 - (b) a law enforcement agency or a person at the child's home of the presence of the child within twenty four (24) hours after discovering that the child was voluntarily absent from home without the consent of the child's parent or guardian.

Section 4.9.062 Civil Penalty

An infraction under this section is a Class A civil infraction.

Section 4.9.063 Definitions

As used in this Section:

“Runaway child” is a person of 17 years of age or younger who has absconded from caretakers without permission or authorization

“Proper notification” means telephonic, written, and/or in-person notification to a peace officer of the Ysleta del Sur Pueblo or the authorized parent, guardian or custodian of the presence of the runaway child within twenty-four (24) hours.

Section 4.9.064 Procedure

On the receipt of a report from a peace officer, probation officer, the Texas Youth Council, a foster home, or a detention facility for children that a child has escaped its custody or upon receipt of a report from a parent, guardian, conservator, or legal custodian that a child is missing, a law enforcement agency shall immediately enter a record of the child into the National Crime Information Center (NCIC).

Section 4.9.070 CUSTODIAL INTERFERENCE

A person commits civil infraction under this Section if the person takes or retains physical custody of a child seventeen (17) years of age or younger when the person:

- (A) Knows that the person's taking or retention of physical custody of the child violates the express terms of a judgment or order, including a temporary order, of a court of competent jurisdiction disposing of the child's custody; or
- (B) Has not been awarded custody of the child by a court of competent jurisdiction, has received due and proper notice that a suit for divorce or a civil suit or application for habeas corpus to dispose of the child's custody has been filed, and removes the child from the person with authorized court awarded custody, without a valid court order authorizing such removal; or
- (C) Is a noncustodial parent or other actor related to the child by consanguinity or affinity who, with the intent to interfere with the lawful custody of a child seventeen (17) years of age or younger, knowingly entices or persuades the child to leave the custody of the custodial parent, guardian, or person standing in the stead of the custodial parent or guardian of the child.

Section 4.9.071 Mitigation

It is a mitigating circumstance to be considered by the prosecution under this Section that the actor physically returned the child to the custodial parent or guardian, within forty-eight (48) hours after the time of the commission of the offense.

Section 4.9.072 Aggravation

It is an aggravating circumstance to be considered by the prosecution under this Section that the actor failed to physically return the child to the custodial parent or guardian within forty-eight (48) hours after the time of the commission of the offense.

Section 4.09.073 Civil Penalty

An infraction under this Section is a Class B civil infraction.

An infraction under this section is a Class C civil infraction if mitigating circumstances exist.

An infraction under this section is a Class A civil infraction if aggravating circumstances exist.

Section 4.09.074 Definitions

“Mitigating circumstances” means any circumstance attending the commission of custodial interference which decreases its severity or decreases its injurious consequences to both the custodial parent or guardian or the child.

“Aggravating circumstances” means any circumstance attending the commission of custodial interference which increases its severity or adds to its injurious consequences, but which is above and beyond the essential constituents of the civil infraction or tort itself.

Section 4.9.080 STALKING

A person commits a civil infraction if:

- (A) The person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct, including following the other person, that:
- (1) the actor knows or reasonably believes the other person will regard as threatening;
 - (a) bodily injury or death for the other person;
 - (b) bodily injury or death for a member of the other person's family or household; or
 - (c) that an offense will be committed against the other person's property; or
 - (2) causes the other person or a member of the other person's family or household to be placed in fear of bodily injury or death or fear that an offense will be committed against the other person's property; and
 - (3) would cause a reasonable person to fear:
 - (a) bodily injury or death for himself or herself;
 - (b) bodily injury or death for a member of the person's family or household; or
 - (c) that an offense will be committed against the person's property.

Section 4.9.081 Civil Penalty

An infraction under this Section is a Class B civil infraction.