Title III – Criminal Code

Criminal Code of the Three Affiliated Tribes of the Fort Berthold Indian Reservation

This Act is called the Three Affiliated Tribes Criminal Code of the Fort Berthold Indian Reservation. It was implemented beginning on July 1, 2025.

LEGISLATIVE HISTORY
Resolution # 25-172-FWF

3-1 Rules of Criminal Procedure

3-1-1 Scope

Except as otherwise provided by the Three Affiliated Tribes Tribal Code and section 3-1-37, these rules govern the practice and procedure in all criminal proceedings in the Tribal courts of the Fort Berthold Indian Reservation (or "Reservation").

3-1-2 Purpose and Construction

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

3-1-3 Titles

These rules shall be known as the Three Affiliated Tribes Rules of Criminal Procedure and may be cited as T.A.T.R. Crim.P.

3-1-4 Complaint

3-1-4.1 General

All criminal prosecutions for violation of Tribal law shall be initiated by a complaint. The complaint is a written statement of the essential facts constituting the offense charged.

a Contents:
   (i) The name of the jurisdiction where it is filed;
   (ii) The names of the person(s) complained of, if the defendant(s) name is known, and if not, then such name(s) as may be given by the complainant;
   (iii) A written statement of the complainant describing in ordinary language the nature of the offense committed, including the time, and place as near as may be ascertained; and
   (iv) The section of the Tribal Code allegedly violated.

b Filing: The completed complaint must be filed by the Tribal prosecutor with the clerk of court who shall mark thereon the date and time of filing.

c Amendment: The judge may permit a complaint to be amended at any time before a finding or verdict if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

3-1-5 Arrest Warrant or Summons Upon Complaint

3-1-5.1 Written Warrant

If it appears to the Tribal court judge or magistrate judge from the complaint, and from any affidavit filed with the complaint that there is probable cause to believe a criminal offense has been committed by the defendant, a warrant for the arrest of the defendant upon the complaint may be issued directing any authorized law enforcement officer to execute it. The finding of probable cause must be based upon evidence, which may be hearsay in whole or in part, provided

there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. The Tribal court judge or magistrate judge shall deny the issuance of a warrant if he finds that there is not probable cause to believe that the offense charged has been committed by the named accused.

3-1-5.2 Telephonic Warrant

The Tribal court judge or magistrate judge may consider information communicated by telephone or other reliable electronic means when reviewing a complaint or deciding whether to issue a warrant or summons. If the Tribal court judge or magistrate judge decides to proceed under this rule, the following procedures apply:

a The Tribal court judge or magistrate judge must place the applicant under oath and may examine the applicant and any person on whose testimony the application is based.

b If the applicant does no more than attest to the contents of a written declaration submitted by reliable electronic means, the Tribal court judge or magistrate judge must acknowledge the attestation in writing on declaration. If the Tribal court judge or magistrate judge considers additional testimony or exhibits, the Tribal court judge or magistrate judge must:

(i) Ensure the testimony is recorded verbatim by electronic recording device, by court reporter or recorder, or in writing;

(ii) Ensure any recording or notes are filed, transcribed on request, and any transcription is certified as accurate;

(iii) Sign any other written record and ensure it is certified as accurate and filed; and

(iv) Ensure the exhibits are filed.

c The applicant must prepare a proposed duplicate original of a complaint, warrant, or summons, and must read or otherwise transmit its contents verbatim to the Tribal court judge or magistrate judge.

d If the applicant reads the contents of the proposed duplicate original, the Tribal court judge or magistrate judge must enter those contents into an original complaint, warrant, or summons. If the applicant transmits the contents by reliable electronic means, the transmission received by the Tribal court judge or magistrate judge may serve as the original.

e The Tribal court judge or magistrate judge may modify the complaint, warrant, or summons. The Tribal court judge or magistrate judge must then:

(i) Transmit the modified version to the applicant by reliable electronic means; or

(ii) File the modified version and direct the applicant to modify the proposed duplicate original accordingly.

f To issue the warrant or summons, the Tribal court judge or magistrate judge must:

(i) Sign the original documents;

(ii) Enter the date and time of issuance on the warrant or summons; and

(iii) Transmit the warrant or summons by reliable electronic means to the applicant or direct the applicant to sign the Tribal court judge or magistrate judge's name and enter date and time on the duplicate original.

g Absent a finding of bad faith, evidence obtained from a warrant issued under this rule is not subject to suppression on the grounds that issuing the warrant in this manner was unreasonable under the circumstances.

3-1-5.3 Summons

A summons may be issued in lieu of a warrant if the Tribal court judge or magistrate judge has reason to believe that the named accused will appear in response to it.

a Failure of Defendant to Appear After Summons - If a defendant who has been duly summoned fails to appear, or if there is reasonable cause to believe that he will fail to appear, a warrant of arrest shall be issued.

3-1-5.4 Form

a Warrant – The warrant shall be in writing, in the name of the Three Affiliated Tribes of the Fort Berthold Indian Reservation and shall be signed by the issuing Tribal court judge or magistrate judge. It shall state:
(i) The defendant's name or, if unknown, a name or description by which the defendant can be identified with reasonable certainty and address, if known, of the accused who is to be arrested;
(ii) The date and place of issuance;
(iii) The description of the offense charged;
(iv) A command that the defendant be arrested and brought before the nearest available Tribal court judge or magistrate judge;
(v) The name and title of the issuing judicial officer with a legible signature; and
(vi) It may also have endorsed upon it the amount of bail recommended or accepted.

b Summons – The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the person issuing it, or another person therein designated at a stated time and place and shall inform the defendant that if he fails to appear, a warrant for his arrest shall be issued.

3-1-5.5 Execution of Service

a Execution of Warrant – The warrant shall be directed to law enforcement officers of the Three Affiliated Tribes, and any authorized law enforcement jurisdiction which has been granted such authority by the Tribal Business Council or outside the Reservation to any law enforcement officer and shall be executed only by a law enforcement officer. It shall be executed by the arrest of the defendant and may be executed any place upon the Reservation by a law enforcement officer authorized to act within the Reservation and elsewhere by any law enforcement officer authorized to act in the place of arrest. The officer need not have the warrant in his possession at the time of arrest, but if he has the warrant or a copy thereof at the time, he shall show it to the defendant immediately upon request. If the officer does not have the warrant or a copy thereof in his possession at the time of arrest, he shall inform the defendant of the offense charged and of the fact that a warrant has been issued, and upon request he shall show the warrant or a copy thereof to the defendant as soon as possible.

b Service of Summons – The summons shall be served as follows:
(i) By leaving a copy personally with the defendant, or
(ii) Mailing a copy of the same to the defendant at his known address at least fourteen (14) days prior to the stated date of his appearance, or
(iii) By leaving a copy, with a member of his household who is over the age of eighteen (18) years, at his place of residence.
(iv) The summons may be served by any person over the age of eighteen (18) years.

c Return – The person executing the warrant or summons shall make a return thereof to the designated Tribal court judge or magistrate judge before whom the defendant is brought or ordered to appear. An unexecuted warrant or summons shall be returned to the Tribal court judge or magistrate judge who may either cancel the same or receive it.

No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any informality in the warrant or

summons, and the warrant or summons may be amended so as to remedy the informality.

3-1-6 Arrest

3-1-6.1 General

Arrest is the taking of a person into custody in order that he may be held to answer for a criminal offense; and the taking of a person into custody in response to a citation for contempt to be held to answer to the court for the same.

3-1-6.2 Authorized Arrest

No person shall be arrested upon the Reservation except by a law enforcement officer authorized to make arrests therein and then only when:

a The officer shall have a warrant signed by a Tribal court judge or magistrate judge or an authenticated copy of a warrant signed by a judge of a Court of the State of North Dakota or of the United States, which has been presented to the Fort Berthold Tribal Court for recognition and a Tribal court judge or magistrate judge thereafter does issue a command for the arrest of such person, or the officer knows for a certainty that such warrant has been issued;

b The offense shall have occurred in the presence of the arresting officer; or

c The officer shall have probable cause based upon reliable information that the person to be arrested has committed an offense; or

d Pursuant to the provisions of Chapter 24, Domestic Violence and Covered Crimes, subsection 3-24-17.1, Mandatory Arrest.

3-1-7 Notification of Rights at Time of Arrest

3-1-7.1 Advice of Rights

Immediately upon arrest, or as soon thereafter as practice, the arrested person shall be advised of the following rights:

a That he has the right to remain silent.

b That any statements made by him may be used against him in court.

c That he has the right to obtain counsel at his own expense. That if he does not wish to obtain counsel at his own expense, he may obtain the services of the public defender at no expense to himself.

d If he begins to answer questions or make statements, he may choose to stop the same at any time.

3-1-8 Initial Appearance Before the Tribal Court Judge or Magistrate Judge

3-1-8.1 General

An officer making an arrest shall take the arrested person without unnecessary delay before the nearest available Tribal court judge or magistrate judge. If a person arrested without a warrant is brought before the Tribal court judge or magistrate judge, a complaint shall be filed as soon as reasonably possible. A copy of the complaint shall be given within a reasonable time to the arrested person and to any Tribal court judge or magistrate judge before whom he is brought.

3-1-8.2 Statement by Tribal Court Judge or Magistrate Judge at the Initial Appearance

In all cases, the person arrested shall be informed of:

a The charge against him and of any accompanying affidavit;

b His right to remain silent;

c That any statement made by him may be later used against him;

d His right to advice of counsel before making any statement or answering any questions;

e His right to obtain the services of the public defender should he choose not to hire counsel;
f His right to be represented by his counsel at every stage of the proceedings;
g His right to be admitted to bail pursuant to the provisions of section 3-1-9;
h His right to a jury trial upon demand if he faces a penalty of incarceration; and
i His right to appear and defend in person or by counsel.

The Tribal court judge or magistrate judge shall then set bail in accordance with the provisions of section 3-1-9.

3-1-9 Release from Custody

3-1-9.1 Release Prior to Trial

Any person charged with an offense shall, at his initial appearance before a Tribal court judge or magistrate judge, be ordered released pending trial in his personal recognizance or upon the execution of an unsecured appearance bond, unless the Tribal court judge or magistrate judge determines, in the exercise of this discretion, that release will not reasonably assure the appearance of the defendant as required. In that event the Tribal court judge or magistrate judge may:

a Release him to the custody of a designated person or organization agreeing to assure the accused's appearance.
b Release him upon reasonable restrictions on his travel, association, or place of residence during the period of release.
c Release him upon the deposit of himself or others of bond, either cash or collateral, in an amount specified by the Tribal court judge, magistrate judge or a bail schedule. The Tribal court judge or magistrate judge, in his discretion, may require that the accused post only a portion of the total bond, the full sum to become due if the accused fails to appear as ordered.
d Release him upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.
e A person may be held and not released if the person is under the influence of drugs or alcohol and the Tribal court judge or magistrate judge finds the person may be a danger to himself or others if released.
f In determining which conditions of release will reasonably assure appearance, the Tribal court judge or magistrate judge, on the basis of available information, shall take into account the nature and circumstance of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear voluntarily at court proceedings.

3-1-9.2 Conditions Upon Release

The conditions imposed upon release shall be entered upon an appropriate order and the defendant shall be informed of the fact that a warrant for his arrest will be issued immediately upon any violation of the same.

3-1-9.3 Review by Court if Detention Continues

A person for whom conditions of release are imposed and who after 48 hours from the time of initial appearance continues to be detained as a result of his inability to meet the conditions of release, shall be entitled, upon request, to have the conditions reviewed by a Tribal court judge or magistrate judge.

3-1-9.4 Amendment of Release Conditions

A Tribal court judge or magistrate judge ordering the release of a person on any conditions specified in this section may at any time amend his order to impose additional or different conditions of release.

3-1-9.5 Disposition by Forfeiture of Collateral Security

This section shall not be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where that disposition is authorized by the court.

3-1-9.6 Release During Trial

A person released before trial shall continue on release during trial under the same terms and conditions as were previously imposed unless the court determines that other terms or conditions or termination of release are necessary to assure his presence during trial or to assure that his conduct will not obstruct the orderly and expeditious progress of the trial.

3-1-9.7 Release Pending Appeal

Application for release after judgment of conviction shall be made in the first instance in the trial court. If the trial court refuses to release pending appeal, or imposes conditions of release, the court shall state in writing the reasons for such action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the MHA Supreme Court or one of the justices thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the appellee. The MHA Supreme Court or a justice thereof may order the release of the appellant pending disposition of the motion.

3-1-9.8 Forfeiture of Bail

a Declaration – If there is a breach of condition of a bond, before the court shall declare a forfeiture of the bail, the defendant must be afforded an opportunity to respond to the revocation request.

b The court may direct that a forfeiture be set aside if it appears that justice does not require the enforcement of the forfeiture.

c Enforcement – If a forfeiture has not been set aside, the court shall enter a judgment of default and execution may issue thereon. By entering into a bond, the obligors submit to the jurisdiction of the Tribal court and irrevocably appoint the clerk of Tribal court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced without the necessity of an independent action after service of notice by mail at the obligor's last-known address.

3-1-9.9 Exoneration

Exoneration of bail is the termination of the obligation of bail pending final disposition of the case. Exoneration of bail occurs under the following circumstances:

a The defendant is found mentally incompetent to stand trial; or

b The case is dismissed; or

c The defendant is acquitted after a trial; or

d The defendant is found guilty after a trial; and

e If the defendant is the depositor of the bail and is adjudged guilty of the offense, if the judgment of the court includes a fine, the bail may be applied toward payment of the fine.

3-1-9.10 Supervision of Detention

The court shall supervise the detention of the defendant pending trial, for the purpose of preventing all unnecessary detention.

3-1-9.11 Release on Bail by Law Enforcement Officer

Any law enforcement officer authorized to do so by the court may admit an arrested person to bail pursuant to the bail schedule or release upon personal recognizance. Police shall have available a bail schedule prepared by the court which shall be used for setting bond where such conditions of release are authorized but the court. Any police officer who refuses to release an accused on bail shall bring such accused before a Tribal court judge or magistrate judge for review at the first available opportunity without unnecessary delay.

3-1-10 Joinder of Offenses and Defendants

3-1-10.1 Joinder of Offenses

Two or more offenses may be charged in the same complaint with a separate count for each offense if the offenses charged are of the same or similar character or are based upon the same act or transaction or on two or more acts or transactions connected or constituting parts of the common scheme or plan.

3-1-10.2 Joinder of Defendants

Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same act or transaction or in the same series or acts or transactions constituting one or more offenses. Such defendants may be charged in one or more counts together or separately and all the defendants need not be charged in each count.

3-1-11 Arraignment

3-1-11.1 General

The arraignment is bringing of an accused before the court, informing him of his rights and of the charge against him, receiving his plea, and setting bail as appropriate in accordance with section 3-1-9.

3-1-11.2 Where and How Held

The arraignment shall be held in open court without unnecessary delay after the accused is taken into custody or after the initial appearance if appropriate, and in no instance shall the arraignment be later than the next regularly scheduled session of court in cases where the defendant has not met the conditions of release ordered pursuant to section 3-1-9.

3-1-11.3 Rights of Accused

At the arraignment, the accused shall be informed of:

a Those rights as set out in subsection 3-1-8.2;

b The rights to enter a plea of guilty or not guilty to the charge against him; and

c Before an accused is required to plead to any criminal charge, the Tribal court judge or magistrate judge shall:

(i) Read the complaint to the accused and determine that he understands the same and the section of the Tribal Code which he is charged with violating, including the maximum authorized penalty; and

(ii) Advise the accused that the arraignment will be postponed should he desire to consult with counsel.

d The accused may waive reading of the complaint.

3-1-11.4 Receipt of Plea at Arraignment

a If the defendant refuses to plead, the court shall enter a plea of not guilty. When a defendant has entered a plea of not guilty or when the court has entered a plea of not guilty for him, the Tribal court judge or magistrate judge shall then inform him of a pre-trial date or preliminary hearing date in the event of a felony charge and set conditions of bail prior to trial.

b If the accused pleads "guilty" to the charge, the judge or magistrate judge shall not accept the plea without first determining that:

(i) The defendant understands that by entering a plea of guilty, he waives his right to further trial of any kind, his right to confront his accuser, his right to remain silent and his rights against self-incrimination;

(ii) That the plea is voluntarily made and is not the result of threats, promise, or coercion;

(iii) Whether the plea is a result of plea discussions made between the prosecuting attorney and the defendant or his attorney; and

(iv) That a basis in fact exists for the acceptance of the plea.

3-1-11.5 Plea Agreement Procedure

a The prosecuting attorney and the attorney for the defendant may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecuting attorney will move for dismissal of other charges or will recommend or not oppose the imposition of a particular sentence or will do both. The court shall not participate in any such discussions.

b If a plea agreement has been reached by the parties which contemplates entry of a plea of guilty in the expectation that a specific sentence will be imposed or that other charges before the court will be dismissed, the parties shall disclose the same to the court in open court at the time that the plea is offered. Thereupon the court may accept or reject the agreement.

c If the court accepts the plea agreement, it shall inform the defendant that it may integrate into the judgment and sentence the disposition called for in the plea agreement or another disposition which may be more favorable to the defendant than that provided for in the plea agreement.

d If the court rejects the plea agreement, it shall inform the parties of this fact, and afford the defendant the opportunity to withdraw his plea, advise the defendant that if he persists in his guilty plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

e If a plea discussion does not result in a plea of guilty, or if a plea of guilty is not accepted or withdrawn, or if judgment on a plea of guilty is reversed on review, neither the plea discussion nor any resulting plea, agreement, or reversed judgment shall be admissible in any subsequent proceeding of this charge whether criminal, civil, or administrative.

3-1-11.6 Judgment after Acceptance of Plea

If the Tribal court judge or magistrate judge accepts the guilty plea of the defendant, he may thereupon impose sentence and enter judgment or he may defer sentencing for a reasonable time to obtain any information he deems necessary for the imposition of a just sentence. In every case, the defendant shall be afforded an opportunity to inform the court of facts in mitigation of the sentence and to address the court personally by way of allocution.

If the charge of the complaint is for an offense listed in Chapter 3-24, Domestic Violence and Covered Crimes, before final disposition in the case, the court must make certain compliance with the victim rights as listed in subsection 3-24-21.1 have been provided to the victim.

3-1-11.7 Guilty Plea by Defendant Only

In no case shall a plea of guilty be put in by anyone except the defendant himself in open court.

3-1-12 Withdrawal of Plea

3-1-12.1 Discretion to Withdraw Plea

The court may, in its discretion, allow a defendant to withdraw a plea and enter a different plea whenever it appears that the interest of justice and fairness would be served by doing so.

3-1-13 Pleadings and Before Trial

3-1-13.1 Pleadings

Pleadings in criminal proceedings shall be the complaint and the plea of not guilty, nolo contendere (no contest), or guilty.

3-1-13.2 Motion for Lack of Jurisdiction

A motion that the court lacks jurisdiction may be made at any time while the case is pending.

3-1-13.3 Pretrial Motions

The following defenses, objections, and requests must be raised by pretrial motion if the basis for the motion is then readily available, and the motion can be determined without a trial on the merits:

a A defect in the institution of the prosecution, including:
   (i) Improver venue;
   (ii) Charging delay;
   (iii) A violation of the right to speedy trial;
   (iv) Selective or vindictive prosecution; or
   (v) An error in the preliminary hearing, for felony charges.

b A defect in the complaint, including:
   (i) Joining two or more offenses in the same count (duplicity);
   (ii) Charging the same offense in more than one count (multiplicity);
   (iii) Lack of specificity;
   (iv) Improper joinder; and
   (v) Failure to state an offense.

c Suppression of evidence.

d Severance of charges or defendants under section 3-1-14.

e Discovery under section 3-1-17.

3-1-13.4 Notice of Intention to Use Evidence

At the arraignment or as soon afterward as practicable:

a The Tribal prosecutor may notify the defendant of its intent to use specified evidence at trial in order to afford the defendant an opportunity to object before the trial pursuant to subsection 3-1-13.3(c).

b The defendant may have an opportunity to move to suppress evidence under subsection 3-1-13.3(c), request notice of the prosecution's intent to use in its evidence-in-chief at trial, any evidence that the defendant may be entitled to discover under section 3-1-17.

3-1-13.5 Notice of Alibi Defense

A defendant who intends to offer an alibi defense must serve written notice on the prosecuting attorney of any intended alibi defense and file the notice within the time provided for the making of pretrial motions or afterwards as the court directs. The notice must state:

a Each specific place where the defendant claims to have been at the time of the alleged offense; and the name, address, and telephone number, if any, of each witness on whom the defendant intends to rely.

b If the defendant serves notice pursuant to this section, the prosecuting attorney must disclose in writing to the defendant or the defendant's attorney:

(i) The name, address, and telephone number, if any, of each witness the prosecution intends to rely on to establish defendant's presence at the scene of the alleged offense; and

(ii) Each prosecution rebuttal witness to the defendant's alibi defense.

c Unless the court directs otherwise, the prosecuting attorney must give its subsection 3-1-13.5(b) disclosure within fourteen (14) days after the defendant serves notice of an intended alibi defense under subsection 3-1-13.5(a), but not later than fourteen (14) days before trial.

d Both the defendant and the prosecuting attorney must promptly disclose in writing to the other party the name, address, and telephone number, if any, of each additional witness if:

(i) The disclosing party learns of the witness before or during the trial; and

(ii) The witness should have been disclosed under subsections 3-1-13.5(a) or (b) if the disclosing party had known of the witness earlier.

e For good cause, the court may grant an exception to any requirement of subsection 3-1-13.5(a)-(d).

f If a party fails to comply with this rule, the court may exclude the testimony of any undisclosed witness regarding the defendant's alibi. This rule does not prohibit the defendant's right to testify.

g Evidence of an intention to rely on an alibi defense, later withdrawn, or of a statement made in connection with that intention, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

3-1-13.6 Notice of Lack of Criminal Responsibility by Reason of Mental Disease or Defect Defense

A defendant who intends to assert a defense of lack of criminal responsibility by reason of mental disease or defect at the time of the alleged offense must so notify the prosecuting attorney in writing and file notice within the time provided for filing a pretrial motion or at any later time the court sets. A defendant who fails to do so cannot later rely on the defense of lack of criminal responsibility. The court may, for good cause, allow the defendant to file the notice late, grant the parties additional trial-preparation time, or make other appropriate orders.

a If a defendant intends to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant bearing on the issue of whether the defendant had the mental state required for the offense charged, the defendant must, within the time provided for filing pretrial motion or at any later time the court sets, notify the prosecuting attorney in writing of this intention and file the notice. The court may, for good cause, allow the defendant to file the notice late, grant the parties additional trial-preparation time, or make other appropriate orders.

b In an appropriate case the court may, upon motion of the prosecuting attorney, order the defendant to submit to an examination by one or more mental health professionals retained by the Tribal government through the prosecuting attorney.

No statement made by a defendant in the course of any examination conducted under this rule (whether conducted with or without the defendant's consent), no testimony based on the statement, and no other fruits of the statement may be admitted in evidence against the accused in any criminal, civil, or administrative proceeding except on an issue regarding mental condition on which the defendant has introduced evidence.

c If the defendant fails to give notice under subsection 3-1-13.6(a) or does not submit to an examination when ordered under subsection 3-1-13.6(b), the court may exclude any expert evidence from the defendant on the issue of the defendant's mental disease, mental defect, or any other mental condition bearing on the defendant's guilt.

d Evidence of an intention of which notice was given under subsections 3-1-13.6(a) or (b), which is later withdrawn, is not, in any civil, criminal, or administrative proceeding, admissible against the person who gave notice of the intention.

3-1-13.7 Motion Date

The court may, at the arraignment or as soon afterward as practicable, set a deadline for the parties to make pretrial motions and may also schedule a motion hearing. At any time before the trial, the court may extend the deadline for pretrial motions. If the court does not set one, the deadline is the start of the trial.

3-1-13.8 Ruling on Motion

A motion before trial shall be determined before trial unless the court finds good cause to defer a ruling. The court must not defer ruling on a pretrial motion if the deferral will adversely affect a party's right to appeal. When factual issues are involved in determining a motion, the court shall state its finding on the record.

3-1-13.9 Effect of Failure to Raise Defense or Objections

A failure to make the motions requested to be made prior to trial shall constitute a waiver thereof unless the court for good cause shown grants relief from such waiver.

3-1-13.10 Records

All proceedings at the hearing, including the finds of fact and conclusions of law made orally, shall be recorded verbatim.

3-1-13.11 Effect of Determination

If the court grants a motion based on a defect in instituting the prosecution or in the complaint, it may order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new complaint.

3-1-14 Trial Joinder

3-1-14.1 Joinder of Complaints

The court may order two or more complaints to be tried together if the offenses and the defendants, if there are more than one, could have been joined in a single complaint. The procedure shall be the same as if the prosecution were under a single complaint. The court's order is discretionary.

3-1-14.2 Separate Trials for Defendants

If prejudice would result to the defendants or the prosecution, the court may order separate trials.

3-1-15 Relief from Prejudicial Joinder

3-1-15.1 Joinder of Offenses or Defendants

If the joinder of offenses or defendants in a complaint or consolidation for trial appears to prejudice a defendant or prosecution, the court may order separate trial on the counts, sever the defendants' trials, or provide any other relief that justice requires.

3-1-15.2 Inspection of Evidentiary Use of Defendant's Statement

Before ruling on a defendant's motion to sever, the court may order the prosecuting attorney to deliver to the court for in-camera inspection any defendant's statements that the prosecution intends to use as evidence.

3-1-16 Depositions

3-1-16.1 When Taken

At any time after the defendant has appeared, any party may take testimony of any person by deposition including audio-visual depositions, except:

a The defendant may not be deposed unless the defendant consents and the defendant's lawyer, if the defendant has one, is present or the defendant waives the lawyer's presence.

b A discovery deposition may be taken after the time set by the court only with leave of court.

c A deposition to perpetuate testimony may be taken only with leave of court, which must be granted upon motion of any party if it appears that the deponent may be able to give material testimony but may be unable to attend a trial or hearing.

d Upon a motion of a party or of the deponent and upon a showing that the taking of the deposition does or will unreasonably annoy, embarrass, or oppress, or cause undue burden or expense to, the deponent or a party, the court in which the prosecution is pending may order that the deposition not be taken or continued or may limit the scope and manner of its taking. Upon demand of the objecting party or deponent, the taking of the deposition may be suspended for the time necessary to make the motion.

e A victim may refuse to participate in a deposition requested by the defendant or the defendant's attorney.

3-1-16.2 Motion to Perpetuate Testimony

If a party is granted leave to take a deposition to perpetuate testimony, the court, upon motion of the party and a showing of probable cause to believe that the deponent would not respond to a subpoena, by order must direct a law enforcement officer to take the deponent into custody and hold the deponent until the taking of the deposition begins but shall not hold longer than six (6) hours and then keep the deponent in custody during the taking of the deposition. If the motion is by the prosecuting attorney, the court, upon further motion by the prosecuting attorney and a showing of probable cause to believe the defendant would not otherwise attend the taking of the deposition, may make the same order for the defendant.

3-1-16.3 Written Notice of Deposition

The party at whose instance the deposition is to be taken shall give all parties reasonable written notice of the name and address of each person to be examined, the time and place for the deposition and the manner of recording. Upon motion of a party or of the deponent, the court may change the time, place, or manner of record.

3-1-16.4 Manner of Deposition

The deposition must be taken in the manner provided in civil actions.

3-1-16.5 Location of Deposition

The deposition must be taken at any location agreed upon by the parties or a location designated by the court.

3-1-16.6 Presence of Defendant

a The defendant may be present at the taking of a discovery deposition, but if the defendant is in custody, the defendant may be present only with leave of court.

b The defendant must be present at the taking of a deposition to perpetuate testimony, but if the defendant's counsel is present at the taking:

(i) The court may excuse the defendant from being present if the defendant appears before the court and understandingly and voluntarily waives the right to be present.

(ii) The taking of the deposition may continue if the defendant, present when it commenced, leaves voluntarily; or

(iii) If the deposition's taking is presided over by a judicial officer, the judicial officer may direct that the deposition's taking, or part of the deposition's taking be conducted in the defendant's absence if the judicial officer has justifiably excluded the defendant because of the defendant's disruptive conduct.

c If the defendant is not present at the commencement of the taking of the deposition to perpetuate testimony and the defendant's absence has not been excused:

(i) Its taking may proceed, in which case the deposition may be used only as a discovery deposition; or

(ii) If the deposition is taken at the instance of the prosecution, the prosecuting attorney may direct that commencement of its taking be postponed until the defendant's attendance can be obtained, and the court, upon application of the prosecuting attorney, by order may direct a law enforcement officer to take the defendant into custody during the taking of the deposition.

3-1-16.7 Payment of Deposition Costs

If the deposition is taken at the instance of the prosecution, the court may, and in all cases where the defendant is unable to bear the expense, the court must direct the Tribal government to pay the expense of the taking of the deposition, including the reasonable expenses of travel and subsistence of defense counsel and, if the deposition is to perpetuate testimony or if the court permits for a discovery deposition, of the defendant in attending the deposition.

3-1-16.8 Use of Deposition at Trial

So far as otherwise admissible under the rules of evidence, a deposition to perpetuate testimony may be used as substantive evidence at the trial or upon any hearing if the deponent is unavailable as defined in Fed. R. Ev. 804(a). A discovery deposition may then be used if the court determines that the use is fair considering the nature and extent of the total examination at the taking thereof, but it may be offered by the prosecution only if the defendant was present at its taking. If only a part of a deposition is offered in evidence by a party, an adverse party may require the offering of all of it that is relevant to the part offered.

3-1-16.9 Objections to Deposition

Objections to receiving in evidence a deposition or part of a deposition may be made as provided in civil actions.

3-1-16.10 Agreement on Depositions

Nothing in this section precludes the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties.

3-1-17 Discovery and Inspection

3-1-17.1 Disclosure of Evidence by Prosecuting Attorney

Information subject to disclosure by the prosecuting attorney:

a Upon a defendant's written request, the prosecuting attorney must disclose to the defendant and make available for inspection, copying, or photographing all of the following:

(i) Any relevant written or recorded statement by the defendant, if:

(i) The statement is within the prosecution's possession, custody, or control; and

(ii) The prosecuting attorney knows, or through due diligence could know, that the statement exists;

(ii) The portion of any written record containing the substance of any relevant oral statement made before or after arrest if the defendant made the statement in response to interrogation by a person the defendant knew to be an agent of state, tribal or federal government.

(iii) The defendant's recorded testimony in any judicial proceeding relating to the charged offense; and

(iv) The substance of any other oral statement made by the defendant, before or after arrest, in response to interrogation by a person the defendant knew to be an agent of the state, tribal or federal government.

b Upon a defendant's request, if the defendant is an organization such as a corporation, partnership, association, or labor union, the prosecution must disclose to the defendant any statements described in subsection 3-1-17.1(b) if the prosecution contends that the person making the statement:

(i) Was legally able to bind the defendant regarding the subject of the statement because of that person's position as the defendant's director, officer, employee, or agent; or

(ii) Was personally involved in the alleged conduct because of that person's position as the defendant's director, officer, employee, or agent.

c Upon a defendant's written request, the prosecution must furnish the defendant with a copy of the defendant's prior criminal record, if any, that is within the prosecution's possession, custody, or control if the prosecuting attorney knows, or through due diligence could know, that the record exists.

d Upon a defendant's written request, the prosecuting attorney must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings, or places, or copies or portions of any of these items, if the item is within the prosecution's possession, custody, or control, and:

(i) The item is material to prepare the defense;

(ii) The prosecution intends to use the item in its case-in-chief at trial; or

(iii) The item was obtained from or belongs to the defendant.

e Upon the defendant's written request, the prosecuting attorney must permit a defendant to inspect and to copy or photograph the results or reports of any physical or mental examinations, and of any scientific tests or experiments if:

(i) The item is within the prosecution's possession, custody, or control;

(ii) The prosecuting attorney knows, or through due diligence could know, that the item exists; and

(iii) The item is material to prepare the defense or the prosecution intends to use the item in its case-in-chief at the trial.

f Upon the defendant's written request, the prosecution must give to the defendant a written summary of any testimony that the prosecution intends to use under Fed.R.Ev.702, 703, or 705 during its case-in-chief at trial. If the prosecution requests discovery under subsection 3-1-17.2(c) and the defendant complies, the prosecution

must, upon defendant's written request, give to the defendant a written summary of testimony that the prosecution intends to use under Fed.R.Ev.702, 703, or 705 as evidence at trial on the issue of the defendant's mental condition. Expert witness summaries must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.

g Except as provided in this section, this rule does not authorize the discovery or inspection of reports, memoranda, or other internal prosecution documents made by an attorney for the prosecution or other prosecution agent in connection with investigating or prosecuting the case. Nor does this rule authorize discovery or inspection of statements made by prosecution witnesses or prospective prosecution witnesses (other than the defendant) to agents of the prosecution except as provided in subsection 3-1-17.4.

3-1-17.2 Defendant's Disclosure of Evidence

Information subject to disclosure by the defendant:

a If a defendant, in writing, requests disclosure under subsection 3-1-17.1(d), and the prosecution complies, then the defendant, upon written request of the prosecution, must permit the prosecution to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items if:
   (i) The item is within the defendant's possession, custody, or control; and
   (ii) The defendant intends to use the item in the defendant's case-in-chief at trial.

b If a defendant, in writing, requests disclosure under subsection 3-1-17.1(e) and the prosecution complies, the defendant, upon written request of the prosecution, must permit the prosecution to inspect and to copy or photograph the results or reports of any physical or mental examination and of any scientific test or experiment if:
   (i) The item is within the defendant's possession, custody, or control; and
   (ii) The defendant intends to use the item in the defendant's case-in-chief at trial or intends to call the witness who prepared the report, and the report relates to the witness's testimony.

c The defendant must, upon written request of the prosecution, give to the prosecution a written statement of any testimony that the defendant intends to use under Fed.R.Ev.702, 703, or 705 as evidence at trial, if:
   (i) The defendant requests disclosure under subsection 3-1-17.1(f) and the prosecution complies; or
   (ii) The defendant has given notice under subsection 3-1-13.6(a) with the intent to present expert testimony on the defendant's mental condition. This summary must describe the witness's opinions, bases and reasons for these opinions, and the witness's qualifications.

d Except for scientific or medical reports, this section does not authorize the discovery or inspection of reports, memoranda, or other documents made by the defendant or the defendant's attorney or agent during the case's investigation or defense or of statements made to the defendant, or the defendant's attorney or agent, by the defendant, a prosecution or defense witness, or a prospective prosecution or defense witness.

3-1-17.3 Continuing Duty to Disclose Evidence and Regulation by the Court

a A party who discovers additional evidence or material before or during trial must promptly disclose its existence to the other party or the court if:
   (i) The evidence or material is subject to discovery or inspection under this section; and

(ii) The other party previously requested, or the court ordered, its production.

b Regulating discovery by the court:
   (i) At any time, the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.
   (ii) Upon motion, the court may permit a party to show good cause by a written statement that the court will inspect in-camera. If relief is granted following a showing in-camera, the court must preserve the entire text of the party's statement under seal.

c If a party fails to comply with subsection 3-1-17.3 or with an order issued under this section, the court may:
   (i) Order that party to permit the discovery or inspection, specify its time, place, manner, and prescribe other just terms and conditions;
   (ii) Grant a continuance of the trial;
   (iii) Prohibit that party from introducing undisclosed evidence;
   (iv) Relieve the requesting party from making disclosure required under this section; or
   (v) Enter any other order that is just under the circumstances.

d Subsection 3-1-13.5 governs discovery of alibi witnesses.

3-1-17.4 Demand for Production of Names, Addresses, and Statements of Witnesses; Codefendant Statements; and Statements of Other Persons

a Upon a defendant's written request, the prosecution must furnish the defendant:
   (i) A written list of the names and addresses of all prosecution witnesses that the prosecution intends to call during its case-in-chief;
   (ii) Any statements made by the listed prosecution witnesses; and
   (iii) Any records of prior criminal convictions of the listed prosecution witnesses that the prosecuting attorney knows, or through due diligence could know, that the records exist.

b A prosecutor may not disclose victim contact information, including the address of the victim, if the victim has requested nondisclosure. If a defendant makes a written request for discovery of the names, addresses, and statements of witnesses, the prosecuting attorney must be allowed to perpetuate the testimony of those witnesses under subsection 3-1-16.2.

c Upon a defendant's written request, the prosecution must permit the defendant to inspect and to copy or photograph any relevant written or recorded confession, admission, or statement of a codefendant, or copies of any of these items if:
   (i) The item is within the prosecution's possession, custody, or control; and
   (ii) The prosecution knows, or through due diligence could know, that the item exists.

d Upon a defendant's written request, the prosecution must permit the defendant to inspect and to copy or photograph any relevant written or recorded statement of any person if:
   (i) The statement is within the prosecution's possession, custody, or control;
   (ii) The prosecuting attorney knows, or through due diligence could know, that the statement exists; and
   (iii) The statement is not available to the defendant under subsection 3-1-17.1 or 3-1-17.4(a) or (b).

e The term "statement" as used in Section 3-1-17.4 means:
   (i) A written statement made by the witness, codefendant, or other person and signed or otherwise adopted by the declarant; or
   (ii) A stenographic, mechanical, electronic, or other record, or a transcription of a record, which is a verbatim recital of an oral statement made by a witness,

codefendant, or other person to an agent of the prosecution and recorded contemporaneously with the making of an oral statement.

3-1-18 Search Warrant Defined: Search and Seizure

3-1-18.1 Search Warrant

A search warrant is a written order, signed by a Tribal court judge or magistrate judge, directed to a Tribal law enforcement officer, ordering him to conduct a search of a particular place, which is described in the order, and to seize and take possession of the property described in the order.

3-1-18.2 Authority to Issue

Every Tribal court judge or magistrate judge shall have the power to issue search warrants for the search and seizure of property and premise of any person under the jurisdiction of the court.

3-1-18.3 Property Which May Be Seized with a Warrant

A warrant may authorize the seizure of:

a Property that constitutes evidence of the commission of a criminal offense; or

b Contraband, the fruits of a crime, or things otherwise criminally possessed; or

c Property designed or intended for use, or which is or has been used as the means of committing a criminal offense.

3-1-18.4 Issuance and Contents

No warrant shall be issued except upon probable cause. Said probable cause shall be supported by written sworn statement of the applicant for said warrant and such others who have reliable information supporting probable cause. The Tribal court judge or magistrate judge's finding of probable cause may be based upon hearsay in whole or in part.

3-1-18.5 Execution and Return with Inventory

The warrant shall be executed only by Tribal law enforcement officers. The officer taking property under warrant shall give the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, if he is present, or if not present, shall leave a copy and receipt at the place from which the property was taken. The return shall be made within the time limit shown on the warrant, which shall not be longer than ten (10) days from the date of issuance and shall be accompanied by a written inventory of any property seized. Warrants not returned within the time specified shall be void.

3-1-18.6 Motion for Return of Property

A person may make a motion to the trial court for the return of the property seized on the grounds that he is entitled to lawful possession of the property and that the same was illegally seized. The Tribal court judge or magistrate judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned and shall not be admissible as evidence at any hearing or trial. This motion shall be made before a complaint has been filed, if made after a complaint is filed, it shall be treated as a motion to suppress under section 3-1-13.3(c).

3-1-18.7 Return of Papers to Clerk

The Tribal court judge or magistrate judge before whom the warrant is returned shall attach to the warrant a copy of the return, inventory, and all other papers in connection with the warrant and shall file them with the clerk of the Tribal court.

3-1-19 Search Without Warrant

No Tribal officer shall conduct any search without a valid warrant except:

a Incident to a lawful arrest;
b With the consent of the person being searched;
c Upon probable cause to believe that the person searched may be armed and dangerous; or
d When the search is of a motor vehicle and the officer has probable cause to believe that it contains contraband, drugs, stolen or embezzled property.

3-1-20 Disposition of Seized Property

3-1-20.1 Return of Seized Property

After final judgment has been entered, unless a motion made pursuant to subsection 3-1-18.6 has been granted, the court shall hold a hearing to determine ownership of all property seized by the police. Upon satisfactory proof of ownership, and after the time for appeal has passed, the property shall be delivered to the owner unless such property is contraband or illegal to possess in which case it shall be sold at public auction, retained for the use of the Tribe, or destroyed.

3-1-21 Subpoena

3-1-21.1 For Attendance of Witness and Production of Evidence Form: Issuance

Every subpoena shall be issued by the Tribal court judge, magistrate judge, or the clerk of court and shall state the name of the court and the title of the action and shall command each person to whom it is directed to attend and bring with him what is demanded and give testimony at a time and place specified therein.

A subpoena may be issued upon the request of any party or upon the court's own initiative and shall compel the attendance of a witness or the production of books, records, documents, or other physical evidence necessary to the fair determination of the case and not an undue burden on the person possessing the evidence.

3-1-21.2 Costs

Every witness answering a subpoena shall be entitled to a fee of fifteen (15) dollars for each day his service is required by the court. In addition, the court may order payment of reasonable travel expenses not to exceed the current established Tribal mileage rate and five (5) dollars per diem.

a The fees and expenses provided for in this section shall be paid by the defendant upon completion of the trial if he requested the subpoena. If the Tribe requested the subpoena, the fees and expenses incidental thereto may be taxed as costs against the defendant if he is found guilty, provided that no defendant shall be incarcerated solely because he is unable to pay such costs immediately.
b If the defendant is indigent, the fees and expenses provided for by this section shall be paid by the Tribe and may be taxed at cost if the defendant is found guilty.
c Costs of production of books, documents and other physical evidence shall be as allowed by the court and shall be borne by the party requesting the production of the same.

3-1-21.3 Frivolous Requests

If the court finds that the subpoena was not requested in good faith but with a frivolous or malicious intent it may order the requesting party to reimburse the Tribe for any expenses incurred under this section and such order shall constitute a judgment upon which execution may levy.

3-1-21.4 Service

a A subpoena may be served at any place within or without the confines of the Reservation, but any subpoena to be served outside the Reservation shall be issued by a Tribal court judge or magistrate judge.

b A subpoena may be served by any Tribal police officer or other person designated by the court for such purpose. Service shall be made by delivering a copy of the subpoena to the person named or by leaving a copy at his place of residence with any competent person sixteen (16) years of age or older who also resides there.

c Proof of service shall be filed with the clerk of court by noting on the subpoena the date, time and place of service and the name of the person who served the subpoena.

3-1-21.5 Taking of Deposition

An order to take a deposition authorizes the issuance by the Tribal court judge or magistrate judge of subpoenas for the person named or described therein. A witness whose deposition is to be taken may be required by subpoena to attend any place designated by the trial court.

3-1-21.6 Contempt: Failure to Obey Subpoena

Failure of a person, in the absence of justification satisfactory to the court, may be deemed contempt of the court from which the subpoena was issued, and a bench warrant may be issued for his arrest.

3-1-22 Place of Trial

3-1-22.1 Where Trial Shall be Held

In all criminal prosecutions the trial shall be in the Tribal Courthouse in New Town, North Dakota, or such other place as may be designated by the Tribal Business Council through legislative authority.

3-1-23 Evidence

The Federal Rules of Evidence shall apply to all criminal proceedings in the Fort Berthold Tribal Court.

3-1-24 Time for Jury Request

3-1-24.1 Request and Composition of Juries

A person charged with a crime which upon conviction has a potential jail sentence must request a jury trial at the arraignment or submit a written request within thirty (30) days from the date of arraignment. Juries shall be comprised of six (6) residents of the Reservation and as may be required by law, non-Indian residents of the counties which are located in the Reservation.

3-1-24.2 When Jury Trial Not Required

If the court determines no jail sentence will be imposed, then no jury trial shall be required.

3-1-24.3 Trials Without Jury

In a trial held before a Tribal court judge or magistrate judge a general finding of guilty or not guilty shall be made.

3-1-25 Jury Trial Selection – REPEALED (see Title 1, Chapter 2, Section 1- Jury Selection)

3-1-26 Sentencing and Judgment

3-1-26.1 Imposition of Sentence

Sentence shall be imposed, or other authorized disposition made without unreasonable delay. Pending disposition, the court may commit the defendant or continue or alter the bail. Before imposing sentence, the court shall:

a Afford counsel an opportunity to speak on behalf of the defendant, and

b Address the defendant personally to determine whether he wishes to make a statement in his own behalf or wishes to present any information in mitigation of punishment or which would require the court to withhold pronouncement of judgment or sentence; if the defendant expresses a desire to do so, the court shall provide him with such opportunity. The prosecution shall be given an opportunity to be heard on any matter material to the imposition of sentence.

c In the event that the criminal charge is one under Chapter 24, Domestic Violence and Covered Crimes, the court must adhere to victim rights provided in subsection 3-24-21.1 before pronouncement of judgment or sentence.

3-1-26.2 Notification of Right to Appeal

After imposing sentence in a case which has gone to trial with a finding of guilty, the court shall advise the defendant of his right to appeal. There shall be no duty on the court to advise the defendant of any right to appeal after sentence is imposed following a plea of guilty.

3-1-26.3 Judgment

A judgment of conviction shall set forth the plea, the verdict, and the adjudication and sentence. If the defendant is found not guilty or is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the Tribal court judge or magistrate judge and entered by the clerk.

3-1-26.4 Presentence Investigation

All matters concerning presentence investigation rest within the sole discretion of the trial judge.

3-1-27 New Trial

3-1-27.1 Granting of New Trial

The court may, upon motion of the defendant, grant a new trial to prevent manifest injustice. The motion must be made in writing and must specify the defects and errors complained of or reason for the motion. A motion for new trial must be made within seven (7) days after verdict or finding of guilt unless it is based upon newly discovered evidence, in which case it must be made within thirty (30) days of said discovery and within two (2) years of final judgment.

3-1-28 Arrest of Judgment

3-1-28.1 Motion to Arrest Judgment

The court on motion of a defendant shall arrest judgment if:

a The complaint does not charge an offense; or

b The court was without jurisdiction of the offense charged.

3-1-28.2 Such motion must be made within seven (7) days of pronounced judgment.

3-1-29 Clerical Mistakes

3-1-29.1 Correction of Mistakes or Errors

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

3-1-30 Probation

3-1-30.1 Applicability – Where a sentence of imprisonment has been imposed on a convicted offender, the court may, in its discretion, suspend the serving of such sentence or a portion of such sentence and release the person on probation under any reasonable conditions deemed appropriate by the court, provided that the period of probation shall not exceed eighteen months.

3-1-30.2 Violation of Probation

Any person who violates the terms of his probation may be required by the court to serve the sentence originally imposed or such part of it as the court may determine to be suitable giving consideration to all the circumstances, provided that such revocation of probation shall not be ordered without a hearing before the court at which the offender shall have the opportunity to explain his actions.

3-1-31 Parole and Pardon

3-1-31.1 Tribal Parole and Pardon Board

The Chairman of Mandan, Hidatsa, Arikara (hereinafter "MHA") Nation shall establish and appoint an MHA Tribal Parole and Pardon Board (hereinafter "Board") which shall be comprised of three (3) members who shall serve a four (4) year term. The Board shall be comprised of one (1) attorney of good standing licensed in any jurisdiction of the United States and two (2) members of the Tribal membership at large. Additionally, one (1) alternate member shall be appointed who shall serve in the event a conflict of interest causes a Board member to be recused from consideration of the parole or pardon request.

a The Board will meet quarterly to review all parole and pardon requests;
b The Board must publish the dates of all scheduled meetings;
c All applications for parole or pardon of a Tribally imposed sentence must be submitted to the Board forty-five (45) days prior to the scheduled meeting of the Board;
d The Board must notify the victim(s) of the scheduled meeting date on the application of a convicted offender for which the person was a victim of the offense of conviction;
e The Board will consider all germane information regarding the conviction, including new mitigating information regarding the conviction, the impact of substance abuse and behavioral health issues and needs, the personal and social development and achievements of the applicant, and any significant problems or circumstances the applicant may be encountering due to the conviction;
f The Board shall have authority to review all documents on file with the Tribal court regarding the crime of conviction; and
g The Board shall issue a recommendation to grant or deny the request for parole or pardon which shall be submitted to the Tribal Business Council of the MHA Nation who must concur or reject the recommendation by a majority vote.

3-1-31.2 Eligibility of Parole or Pardon

Any person sentenced to at least six months incarceration by the Tribal court to detention or labor shall be eligible for parole or pardon after the person has served one-half (1/2) of the sentence imposed by the Tribal court.

3-1-31.3 Violations of Parole or Pardon

Any person who violates the conditions of his parole or pardon may be required by the court to serve the whole of the original sentence, provided that such revocation of parole or pardon shall not be ordered without a hearing before the Board at which time the offender shall have the opportunity to explain his actions.

3-1-32 Appeals

3-1-32.1 Filing the Notice of Appeal

An appeal from an order or final judgment of the Tribal court permitted as of right to the MHA Supreme Court shall be taken by filing a notice of appeal with the clerk of the Tribal court within the time allowed by subsection 3-1-32.2.

3-1-32.2 Time for Appeal: When Taken

The notice of appeal shall be filed within thirty (30) days after entry of the judgment or order appealed from. If a motion is made pursuant to section 3-1-26 or section 3-1-27, notice of appeal must be filed within ten (10) days after the entry of the order denying the motion. A judgment or order is entered within the meaning of this subdivision when it is entered in the criminal docket. The MHA Supreme Court may, in its discretion, extend the time for filing a notice of appeal for a period not to exceed thirty (30) days from the expiration of the time prescribed by this section.

3-1-32.3 Content of Notice of Appeal

The notice of appeal shall specify the party or parties taking the appeal, and shall designate the verdict, judgment, or order or part thereof appealed from.

3-1-32.4 Service of Notice of Appeal

The clerk of MHA Supreme Court shall serve notice of the filing of the notice of appeal either by personal service or by mail addressed to the parties. The clerk of MHA Supreme Court also dockets the notice of appeal in the Tribal appeals court docket. The clerk of MHA Supreme Court shall note on each copy the date on which the notice of appeal was filed. The clerk of MHA Supreme Court shall also note in the docket the names of the parties to whom copies have been mailed, with the date of mailing.

3-1-32.5 Transmittal to Appeals Court

Within five (5) days after the notice of appeal is filed with the Tribal court, the clerk shall transmit the same to the MHA Supreme Court by docketing in the Tribal appeals court docket the notice of appeal, the verdict, the judgment, or any order of the court from which the appeal is taken, the complaint, and the undertaking on appeal and all documents and papers filed in the action.

3-1-32.6 Designation of Parties on Appeal

A party appealing shall be known as appellant and an adverse party shall be known as appellee.

3-1-32.7 Supervision in Appeals Court

The supervision and control of the proceeding on appeal shall be in the appellate court from the time the appeal is taken. The MHA Supreme Court, at any time after an appeal is taken may entertain a motion to dismiss the appeal or direct the trial court to modify or vacate any order made by the Tribal court relating to the prosecution from which the appeal is taken, including any order fixing or denying bail.

3-1-33 Stay of Execution and Relief of Pending Review

3-1-33.1 Staying of Incarceration Pending Appeal

A sentence of imprisonment, if an appeal is taken, may be stayed by the trial court upon such terms and conditions as the court deems proper.

3-1-33.2 Fine

A sentence to pay a fine or fine and costs, if an appeal is taken, may be stayed by the trial court upon such terms as the trial court deems proper. The trial court may require the defendant to deposit the whole or any part of the fine and costs with the Tribal court clerk, or to give bond for the payment thereof, or to submit an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his assets.

3-1-34 Dismissal

3-1-34.1 By Prosecuting Attorney

No criminal case shall be dismissed by any prosecuting attorney except upon motion and with the court's approval. Such a motion shall be supported by a written statement concisely stating the reason for the motion. The statement shall be filed with a record of the case and be open to public inspection. A dismissal may not be ordered during trial without the defendant's consent.

3-1-34.2 By the Court

If there is unnecessary delay in filing a complaint against a defendant who has been arrested or for whose arrest a warrant has been issued, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the complaint.

3-1-35 Calendars

The court administrator shall provide for placing criminal actions or proceedings upon the calendar. Preference shall be given to criminal cases as far as practicable. The court may make such orders for advancement or continuance of a criminal action or proceeding as may be necessary in the interest of justice.

3-1-36 Regulation of Conduct in Courtroom

No camera, sound recorder, or other device, except those operating for official purposes, by or under the direction of the court, shall be used to photograph, record, or broadcast proceedings of the court, nor shall such devices be brought in or allowed to remain in the courtroom while proceedings are in progress.

3-1-37 Application and Exception

3-1-37.1 Courts

These rules govern the practice and procedure in all criminal proceedings in the Tribal courts of the Three Affiliated Tribes as prescribed in section 3-1-1.

3-1-37.2 Proceedings Not Applicable to this Chapter

a Habeas Corpus - These rules do not apply to proceedings on any application for a writ of Habeas Corpus had in the courts of this Reservation.

b Mental Health Proceedings – These rules do not apply to mental health proceedings.

c Other Proceedings – these rules do not apply to:

(i) Extradition and rendition of fugitives.

(ii) Forfeiture of property for a violation of a statute of the Three Affiliated Tribes.

(iii) The collection of fines and penalties.

(iv) Proceedings under the Juvenile Court Act.

(v) An action to determine paternity of a child born out of wedlock.

3-1-38 Effective Date: Statutes Superseded

3-1-38.1 Effective Date

These rules will take effect on July 1, 2025. They govern all criminal proceedings thereafter commenced and, so far as practicable, all proceedings then pending.

3-1-38.2 Statutes Superseded

Upon the taking of effect of these rules, all statutes and parts of statutes in conflict herewith and the statutes listed as superseded in the Table of Statutes affected are superseded.

3-2 Provisions for Criminal Practice

3-2-1 Scope

3-2-1.1 Governing Provisions

Except as otherwise provided by this Three Affiliated Tribes' Tribal Code and as provided by section 3-1-37, these provisions govern the practice and procedure in all criminal proceedings in the Tribal courts of the Fort Berthold Indian Reservation. This code shall be known as the Three Affiliated Tribes Criminal Code and cited as T.A.T.C.C.

3-2-2 Purpose and Construction

3-2-2.1 Regulation of Formal Steps

These provisions are intended to regulate the formal steps in an action or other judicial proceeding and include the judicial process for enforcing rights and duties recognized by substantive law and for justly administering redress for infraction of them. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

3-2-3 Provisions and Principles of Construction

3-2-3.1 Definition of Offenses

The general purpose of the provisions governing the definition of offenses are:

a To forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests.
b To subject to public control people whose conduct indicates that they are disposed to commit crimes.
c To safeguard conduct that is without fault from condemnation as criminal.
d To give warning of the nature of the conduct declared to constitute an offense; and
e To differentiate on reasonable grounds between serious and minor offenses.

3-2-3.2 Sentencing and Treatment of Offenders

The general purpose of the provisions governing the sentencing and treatment of offenders are:

a To prevent the commission of offenses.
b To promote the correction and rehabilitation of offenders.
c To safeguard offenders against excessive, disproportionate, or arbitrary punishment.
d To give fair warning of the nature of the sentences that may be imposed on conviction of an offense.
e To differentiate among offenders with a view to a just individualization in their treatment.
f To define, coordinate, and harmonize the powers, duties and functions of the courts and administrative officers and agencies responsible for dealing with offenders.
g To advance the use of the general accepted scientific methods and knowledge in the sentencing and treatment of offenders.
h To integrate responsibility for the administration of the correctional system.

3-2-3.3 Fair Import of Terms

The provisions of this code shall be construed according to the fair import of their terms but when language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this section and the special purpose conferred by this code shall be

exercised in accordance with the criteria stated in this code and, insofar as such criteria are not decisive, to further the general purpose so stated in section 3-2-2.

3-2-4 Territorial Applicability

3-2-4.1 Except as otherwise provided in this section, a person may be convicted of an offense under these laws for actions taken within the exterior boundaries of the Fort Berthold Indian Reservation which are committed by his own conduct or the conduct of another for which he is legally accountable if:

a Either the conduct which is an element of the offense occurs in the Reservation, or the result of such conduct if such an element occurs in the Reservation; or

b Conduct occurring outside the jurisdiction of the Reservation is sufficient under the law of this code if such conduct constitutes an attempt to commit an offense within the Reservation and the conduct shows a substantial step or an overt act in furtherance of that attempt; or

c Conduct occurring outside the jurisdiction of the Reservation is sufficient under the laws of this criminal code to constitute a conspiracy to commit an offense within the Reservation if such conduct shows a substantial step or an overt act in furtherance of that conspiracy within the Reservation; or

d Conduct occurring within the exterior boundaries of the Reservation which establishes complicity in the commission of, or an attempt, solicitation, or conspiracy to commit, an offense in another jurisdiction which also is an offense under this code of the Reservation; or

e The offense consists of the omission to perform a legal duty imposed by this code of the Reservation with respect to domicile, residence or a relationship to a person, thing, or transaction on the Reservation; or

f The offense is based on a criminal code of the Reservation which expressly prohibits conduct outside the exterior boundaries of the Reservation, when the conduct bears a reasonable relation to a legitimate interest of the Reservation and actor knows or should know that his conduct is likely to affect that interest.

3-2-4.2 The above subsection 3-2-4.1(a) does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside the Fort Berthold Indian Reservation which would not constitute an offense if the result had occurred there unless the actor purposely or knowingly caused the result within the Reservation.

3-2-4.3 When the offense is homicide, either the death of the victim or the bodily impact causing death constitutes a "result", within the meaning of subsection 3-2-4.1(a) and if the body of a homicide victim is found within the exterior boundaries of the Fort Berthold Indian Reservation, it is presumed that such result occurred within the Reservation.

3-2-4.4 The Fort Berthold Indian Reservation includes the land and water and together with the air space above such land and water with respect to which the Three Affiliated Tribes have legislative jurisdiction.

3-2-5 Offense Defined by Published Statutes

3-2-5.1 No conduct constitutes an offense unless it is a crime or violation under this code or another ordinance of the Fort Berthold Indian Reservation.

3-2-5.2 The provisions of this code are applicable to offenses defined by other ordinances unless this code otherwise provides.

3-2-5.3 This section does not affect the power of the Tribal court to punish for contempt or to utilize any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

3-2-6 Prior Offenses

3-2-6.1 The revised code does not apply to offenses committed prior to its effective date and prosecution for such offenses shall be governed by the prior law, which is continued in effect for that purpose, as if this code were not in force. For the purpose of section 3-2-7, an offense was committed prior to the effective date of this code if any of the elements of the offense occurred prior to the effective date of this code. In any case pending on or after the effective date of this code, involving an offense committed prior to the effective date:

a Procedural provisions of this code shall govern, as far as they are justly applicable, and their application does not introduce confusion or delay.

b Provisions of this code providing a defense or mitigation shall apply, with the consent of the defendant.

c The court, with the consent of the defendant, may impose sentence under the previous provision of this code applicable to the offense and the offender.

3-2-7 Prior Sentences

Provisions of this code governing the treatment and the release or discharge of prisoners, probationers and parolees shall apply to persons under sentence for offenses prior to the effective date of this code, except that the minimum or maximum period of their detention or supervision shall in no case be increased.

3-2-8 Method of Prosecution When Conduct Constitutes More than One Offense

3-2-8.1 When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

a One offense is included in the other, as defined in subsection 3-2-8.1(d);

b One offense consists only of a conspiracy or other form of preparation to commit the other;

c Inconsistent findings of fact are required to establish the commission of the offenses;

d The offense differs only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

e The offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of such conduct constitute a separate offense.

3-2-9 Limitation on Separate Trials for Multiple Offenses

3-2-9.1 Except as provided in section 3-2-10, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal episode if such offenses are known to the appropriate prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction of the Tribal court.

3-2-10 Authority of the Court to Order Separate Trials

3-2-10.1 When a defendant is charged with two or more offenses based on the same conduct or arising from the same criminal episode, the court, on application of the prosecutor or attorney of the defendant, may order any such charge to be tried separately, if it is satisfied that justice so requires.

3-2-11 Conviction of Lesser Included Offenses Permitted

3-2-11.1 Upon a request filed by the defendant or prosecutor, the court may instruct the jury that the defendant can be convicted of a lesser included offense of the offense charged in the complaint. An offense is so included when:

a It shares some, but not all, of the elements of the charged offense.

b It consists of an attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein.

c The crimes are of a similar character and based on the same act or common plan; or

d It differs from the offense charged only in the respect that a less severe injury or risk of injury to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

3-2-12 Charging Offenses Together

3-2-12.1 The prosecutor may charge the lesser included offense together with the greater offense in the complaint, however, only one offense can provide the basis for conviction. The defendant cannot be found guilty of both offenses because the elements of the lesser included offense are part of the greater offense.

3-2-13 Submission of Lesser Included Offense to Jury

3-2-13.1 The court shall not be obligated to charge the jury with respect to a lesser included offense unless there is a rational basis for a verdict acquitting the defendant of the greater offense charged and convicting him of the lesser included offense.

3-2-14 Prosecution Barred by Former Prosecution for the Same Offense

3-2-14.1 When a prosecution is for a violation of the same provision of this code and is based upon the same facts as a former prosecution, it is barred by such former prosecution under the following circumstances:

a The former prosecution resulted in an acquittal unless such acquittal has been set aside because of an error of law prejudicial to the prosecution. There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense although the conviction is subsequently set aside.

b The former prosecution was terminated, after the complaint had been filed by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated, and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

c The former prosecution was improperly terminated. Except as provided in this subsection there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the first witness is sworn but before verdict. Termination under any of the following circumstances is not improper:

(i) The defendant consents to the termination or waives, by motion to dismiss or otherwise, his right to object to the termination.

(ii) The trial court finds that the termination is necessary because:

(i) It is physically impossible to proceed with the trial in conformity with the law.

(ii) There is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law; or

(iii) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Three

Affiliated Tribes, unless the prejudicial conduct is that of the prosecutor and the court finds that such conduct was done to obtain a mistrial; or

(iv) The jury is unable to agree upon a verdict; or

(v) False statements of the juror on voir dire prevent a fair trial.

3-2-15 Prosecution Barred by Former Prosecution for Different Offenses

3-2-15.1 Although a prosecution is for a violation of a different provision of the statute than a former prosecution which is based on different facts, it is barred by such former prosecution under the following circumstances:

a The former prosecution resulted in an acquittal of defendant in a charged offense as defined in section 3-2-14, and the subsequent prosecution is for:

(i) Any offense conduct of which the defendant should have been charged on the first prosecution; or

(ii) Any offense conduct for which the defendant should have been tried on the first prosecution under section 3-2-14, unless the court ordered a separate trial of the charges of such offense conduct; or

(iii) The same offense conduct, unless the subsequent charged offense requires proof of a fact not required by the other previous charged offense, of which the defendant was formerly convicted or acquitted, and the present offense for which he is subsequently prosecuted and the law defining such offenses is intended to prevent a substantially different harm or evil.

b The second offense was not consummated when the former trial commenced.

(i) The former prosecution was terminated, after the complaint was filed by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed, or vacated and which acquittal, final order, or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.

(ii) The former prosecution was terminated as improper as defined in section 3-2-14, and the subsequent prosecution is for an offense for which the defendant could have been charged had the former prosecution not been improperly terminated.

3-2-16 Former Prosecution in Another Jurisdiction

3-2-16.1 When conduct constitutes an offense within the concurrent jurisdiction of the Three Affiliated Tribes and of the United States or other legal entity with jurisdiction, a prosecution in any other jurisdiction is not a bar to a subsequent prosecution on the Fort Berthold Indian Reservation.

3-2-17 Former Prosecution before Court Lacking Jurisdiction or when Fraudulently Procured by the Defendant

3-2-17.1 A prosecution is not a bar within the meaning of sections 3-2-14, 3-2-15, and 3-2-16 under any of the following circumstances:

a The former prosecution was before a court which lacked jurisdiction over the defendant or the offense.

b The former prosecution was procured by the defendant without the knowledge of the appropriate prosecuting officer and with the purpose of avoiding the sentence which might otherwise be imposed; or

c The former prosecution resulted in a judgment of conviction which was held invalid in a subsequent proceeding on a writ of habeas corpus, coram nobis or similar process.

3-2-18 Proof and Presumptions

3-2-18.1 No person may be convicted of an offense unless each element of such offense is proven beyond a reasonable doubt. A person is presumed innocent until proven guilty. The fact that the accused

has been arrested, confined, or charged with the offense gives rise to no inference of guilt at the accused's trial.

3-2-18.2 In this section 3-2-18, the prosecuting attorney shall not be required to:

a Negate a defense by allegation in the charging document;

b Negate a defense by proof, unless the issue is in the case as a result of evidence sufficient to raise a reasonable doubt on the issue; or

c Disprove an affirmative defense unless, and until, there is evidence supporting such defense.

3-2-18.3 A ground of defense is affirmative, within the meaning of subsection 3-2-18.2(c) when:

a It arises under a section of this code which so provides; or

b It relates to an offense defined by an ordinance other than this code and such ordinance so provides; or

c It involves a matter of excuse or justification peculiarly within the knowledge of the defendant on which he can fairly be required to adduce supporting evidence.

3-2-18.4 When the application of this code depends upon the finding of a fact which is not an element of an offense, unless this code otherwise provides:

a The burden of proving the fact is on the prosecution or defendant, depending on whose interest or contention will be furthered if the finding should be made; and

b The fact must be proved to the satisfaction of this court or jury as the case may be.

3-2-18.5 When this code establishes a presumption with the respect to any fact which is an element of an offense, it has the following consequences:

a When there is evidence of the fact which give rise to the presumption, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly negates the presumed fact; and

b When the issue of the existence of the presumed fact is submitted to the jury, the court shall charge that while the presumed fact must, on all the evidence, be proved beyond reasonable doubt, the law declares that the jury may regard the facts giving rise to the presumption as sufficient evidence of the presumed fact.

3-2-19 General Definitions

3-2-19.1 In this code, unless a different meaning plainly applies:

a "Act" or "action" means a bodily movement whether voluntary or involuntary.

b "Acted", "acts," and "actions" include, where relevant, "omitted to act" and "omissions to act".

c "Actor" includes, where relevant, a person guilty of an omission.

d "Bodily Injury" means any impairment of physical condition, including physical pain.

e "Conduct" means an action or omission and its accompanying state of mind, or where relevant, a series of acts and omissions.

f "Court" means all courts of the Fort Berthold Indian Reservation and shall include the District, Juvenile, and Appellate courts.

g "Dangerous weapon" has the meaning as defined in Title 3, Chapter 20 "Weapons and Explosives" in subsection 3-20-1.1(a).

h "Person", "her", "his", and "actor" include any man, woman, or child.

i "Elements of an offense" means:

(i) The forbidden conduct.

(ii) The attendant circumstances specified in the definition and grading of the offense.

(iii) The required culpability; and

(iv) Any required result; and the nonexistence of a defense as to which there is evidence sufficient to raise reasonable doubt on the issue.

j "Involuntary" has the meaning specified in subsection 3-2-20.1(a).

k "Material element of an offense" means an element that does not relate exclusively to the statute of limitations, jurisdiction, venue, or to another matter similarly unconnected with:

(i) The harm or evil, incident to conduct, sought to be prevented by the law defining the offense, or

(ii) The existence of a justification or excuse for such conduct.

l "Purposely" has the meaning specified in subsection 3-2-22.2(a) and equivalent terms such as "with purpose", "designed", or "with design" have the same meaning.

m "Intentionally" or "with intent" means purposely.

n "Knowingly" has the meaning specified in subsection 3-2-22.2(b) and equivalent terms such as "knowing" or "with knowledge" have the same meaning.

o "Recklessly" has the meaning specified in subsection 3-2-22.2(c) and equivalent terms such as "recklessness", or "with recklessness" have the same meaning.

p "Negligently" the meaning specified in subsection 3-2-22.2(d) and equivalent terms such as "negligence" or "with negligence" have the same meaning.

q "Omission" means a failure to act.

r "Ordinance" includes this criminal code and other related ordinances of the Fort Berthold Indian Reservation along with amendatory changes hereafter.

s "Reasonably believes" or "reasonable belief" designates a belief which the actor is not reckless or negligent in holding.

3-2-20 General Principles of Liability Requirement of Voluntary Act; Omission as a Basis of Liability for an Act

3-2-20.1 A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable.

a The following are not voluntary acts within the meaning of this section:

(i) A reflex or convulsion.

(ii) A bodily movement during unconsciousness or sleep.

(iii) Conduct during hypnosis or resulting from hypnotic suggestion.

(iv) A bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

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

(i) The omission is expressly made sufficiently by the law defining the offense; or

(ii) A duty to perform the omitted act is otherwise imposed by law.

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

3-2-21 Absolute Liability

3-2-21.1 Notwithstanding any other provisions of existing law and unless a subsequent ordinance otherwise provides:

a When absolute liability is imposed with respect to any material element of an offense defined by ordinance other than this code and a conviction is based upon such liability, the offense constitutes a violation; and

b Although absolute liability is imposed by law with respect to one or more of the material elements of an offense defined by a statute other than this code, the culpable commission of the offense may be charged and proved, in which event negligence with

respect to such elements constitutes sufficient culpability and the classification of the offense and the sentence that may be imposed therefore upon conviction are determined by section 3-9-2 and Title 3, Chapter 9 of this code.

3-2-22 General Requirement of Culpability

3-2-22.1 Minimum Requirements

Minimum requirements of culpability must be established. Except as provided in subsection 3-2-23.1, a person is not guilty of an offense unless he acted intentionally, knowingly, recklessly, or negligently, as the law may require, with respect to each material element of the offense.

3-2-22.2 Kinds of Culpability Defined

a Intentionally - a person acts intentionally with respect to a material element of an offense when:

(i) If the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

(ii) If the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

b Knowingly - a person acts knowingly with respect to a material element of an offense when:

(i) If the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or cause such a result; and

(ii) If the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

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

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

3-2-22.3 Culpability Required Unless Otherwise Provided

When culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts intentionally, knowingly, or recklessly with respect thereto.

3-2-22.4 Prescribed Culpability Requirement Applied to all Material Elements

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

3-2-22.5 Substitutes for Negligence, Recklessness, and Knowledge

When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely, knowingly, or recklessly. When reckless suffices to establish an element, such element also is established if a person acts intentionally.

3-2-22.6 Requirement of Intent Satisfied if Intent is Conditional

When a particular intent is an element of an offense, the element is established although such intent is conditional, unless the condition negates the harm or evil sought to be prevented by the law defining the offense.

3-2-22.7 Requirement of Knowledge Satisfied by Knowledge of High Probability

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

3-2-22.8 Requirement of Willfulness Satisfied by Acting Knowingly

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

3-2-22.9 Culpability as to Illegality of Conduct

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

3-2-22.10 Culpability as Determinant of Grade of Offense

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

3-2-23 Inapplicable Culpability Requirements

3-2-23.1 The requirements of culpability prescribed in section 3-2-22 do not apply to:

a Offenses which constitute violations, unless the requirement involved is included in the definition of the offense or the court determines that its application is consistent with effective enforcement of the law defining the offense; or

b Offenses defined by ordinances other than this code, as far as a legislative purpose to impose absolute liability for such offenses with respect to any material element plainly appears.

3-2-24 Causal Relationship Between Conduct and Result

3-2-24.1 Conduct is the cause of result when:

a It is an antecedent but for which the result in question would not have occurred; and

b The relationship between the conduct and result satisfies any additional casual requirements imposed by this code or by the law defining the offense.

3-2-25 Divergence Between Result Designed or Contemplated and Actual Result or Between Probable and Actual Result

3-2-25.1 When intentionally or knowingly causing a particular result is an element of an offense, the element is not established if the actual result is not within the purpose of the contemplation of the actor unless:

a The actual result differs from the designed or contemplated result, as the case may be, only in the respect that a different person or different property is injured or affected or that the injury or harm designed or contemplated would have been more serious or more extensive than that caused; or

b The actual result involves the same kind of injury or harm designed or contemplated and is not too remote or accidental in its occurrence to have a just bearing on the actor's liability or on the gravity of his offense.

3-2-25.2 When recklessly or negligently causing a particular result is an element of an offense, the element is not established if the actual result is not within the risk of which the actor is aware or, in the case of negligence, of which he should be aware unless:

a The actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm would have been more serious or more extensive than that caused; or

b The actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence to have a just bearing on the actor's liability or on the gravity of his offense.

3-2-25.3 When causing a particular result is a material element of an offense for which absolute liability is imposed by law, the element is not established unless the actual result is a probable consequence of the actor's conduct.

3-2-26 Liability for Conduct of Another; Complicity

3-2-26.1 A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both. A person is legally accountable for conduct of another person when:

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

b He is made accountable for the conduct of such other person by this code or by the law defining the offense; or

c He is an accomplice of such other person in the commission of the offense. A person is an accomplice of such other person in the commission of an offense if:

(i) With the purpose of promoting or facilitating the commission of the offense, he:

(i) Solicits such other person to commit it; or

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

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

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

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

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

f Unless otherwise provided by this code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:

(i) He is a victim of that offense; or

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

(iii) He terminates his complicity prior to the commission of the offense and

(i) Wholly deprives it of its effectiveness in the commission of the offense; or

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

g An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person accused to have committed the offense has not

been prosecuted or convicted or has been convicted of a different degree of offense or has an immunity to prosecution of conviction or has been acquitted.

3-3 Criminal Extradition Procedure

3-3-1 The TAT Extradition Official, appointed by the Chairman of the Judicial Committee, shall have the authority to have apprehended and delivered up to the executive authority of any Indian tribe, state, or the United States, any person charged with or convicted of a felony, who has fled from justice and is found within the exterior boundaries of the Fort Berthold Indian Reservation.

3-3-2 A formal demand for extradition must be made in writing by the demanding sovereign alleging that the individual was present within the jurisdiction of the demanding sovereign at the time of the commission of the alleged crime and that, thereafter, he fled from the jurisdiction of the sovereign. Accompanying the formal demand shall be a copy of any warrant outstanding against the individual, a copy of any judgment of conviction or any sentence imposed in execution thereof, or a statement by an appropriate agent of the demanding sovereign that the individual has escaped from confinement or has violated the terms or conditions of his bail, probation, or parole. Additionally, the TAT Extradition Official shall receive a copy of any indictment, a copy of any information or complaint supported by an affidavit, or a copy of an affidavit made before a magistrate judge or judge in said jurisdiction. The indictment, information, complaint, or affidavit made before a magistrate judge or judge must charge the individual whose extradition is demanded with having committed a felony under the laws of that sovereign. The copy of the indictment, information, complaint, affidavit, judgment of conviction, or sentence shall be authenticated by an appropriate agent of the demanding sovereign.

3-3-3 If the TAT Extradition Official determines that the demand should be complied with, he shall cause a Tribal court judge or magistrate judge to sign a warrant for apprehension which shall be directed to the TAT law enforcement office for execution. The warrant shall authorize any TAT law enforcement officer to apprehend the individual at any time and any place where he may be found within the Fort Berthold Indian Reservation, and to command the aid of all TAT law enforcement officers in the execution of the warrant.

3-3-4 No individual apprehended under such warrant shall be delivered directly over to an agent of the demanding sovereign. He shall first be taken forthwith before a Tribal court judge or magistrate judge who shall inform him of the demand made for his extradition, the felony with which he has been charged or of which he has been convicted, and his right to demand and secure legal counsel, and his right to a full hearing to challenge the proposed extradition.

3-3-5 A full hearing shall be held within seventy-two (72) hours after the individual is apprehended to test the validity of the arrest. It will be presumed that the individual arrested desires a full hearing, unless the individual waives such hearing by executing in the presence of a Tribal court judge or magistrate judge a writing which states that he consents to the return to the demanding sovereign without a full hearing on the proposed extradition.

3-3-6 If, from the examination of the evidence presented at a hearing before a Tribal court judge or magistrate judge, it appears that the individual held is, in fact, the individual whose extradition is demanded and that he has fled from justice, the Tribal court judge or magistrate judge shall, by an order reciting his determination, commit him to a Tribal detention facility until such time, not exceeding thirty (30) days, for the TAT Extradition Official to notify and surrender him to an agent of the demanding sovereign.

3-3-7 The TAT Extradition Official shall also have the authority to demand the return of an individual charged with a Tribal crime, with escaping from confinement, or with violating the terms or conditions of his bail, probation, or parole within the Fort Berthold Indian Reservation, from the executive authority of any other sovereign authorized to receive such demand.

3-3-8 When the return to the Fort Berthold Indian Reservation of an individual charged with or convicted of a crime within the Reservation is required, a Tribal court judge or magistrate judge shall present to the TAT Extradition Official a written application for the return of such individual. The application shall state the name of the individual, the crime with which he has been charged or of which he has been convicted, the approximate time, place and circumstances of its commission, and the jurisdiction in which he is believed to be, including location of the individual in such jurisdiction, at the time the application is made. The application shall certify that, in the opinion of the Tribal court judge or magistrate judge, the ends of justice require the arrest and return of the individual to the Reservation for trial or other hearing and that the proceeding is not instituted to enforce a private claim.

3-3-9 An individual returned to the Fort Berthold Indian Reservation by means of extradition based on a criminal charge shall not be subject to personal service of process in any civil action arising out of the same circumstances involved in the criminal proceeding, until he has been finally convicted or, if acquitted, until he has had reasonable opportunity to return to the jurisdiction from which he was extradited.

An exception to this section's prohibition on personal service of process in civil action arising out of the same circumstances involved in the criminal proceeding is if the criminal proceeding is brought under Chapter 24, Domestic Violence and Covered Crimes, which allows the issuance of a protection order to the victim of the crime.

3-3-10 Nothing contained in these Three Affiliated Tribes Criminal Code Provisions and Procedures shall be deemed to constitute a waiver by the Three Affiliated Tribes of their right, power, or privilege to try such demanded individual for any crime committed within the Fort Berthold Indian Reservation or of their right, power, or privilege to regain custody of such individual by extradition proceedings for the purpose of trial, sentence, or punishment for any crime committed within the Reservation.

3-4 Statute of Limitations

3-4-1 Statute of Limitations

3-4-1.1 No prosecution shall be maintained under this Three Affiliated Tribes Criminal Code unless the action has been commenced within one (1) year after the commission of the offense for Class 2, 3, and 4 misdemeanors and three (3) years for Class 1 Misdemeanor and five (5) years for Felony offenses.

a There is no limitation on the time in which a prosecution for murder must be commenced. It may be commenced at any time after the death of the victim.

b No statute of limitation shall preclude the prosecution for an offense involving the sexual or physical abuse or assault, or kidnapping, of a child under the age of eighteen (18) years.

3-4-2 Completed Offense

3-4-2.1 An offense is committed when every element defining an offense occurs. For purposes of the statute of limitations clock, time starts to run on the day after the offense is committed.

3-4-2.2 A prosecution is commenced either when a complaint is filed or when a warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay.

3-4-3 Tolling of Limitations

3-4-3.1 A period of limitation does not run:

a During any time when the accused is continuously absent from the Reservation or has no reasonably ascertainable place of abode or work within the Reservation.

b During any time when the prosecution against the accused for the same conduct is pending on this Reservation.

3-4-4 Concealed Crime

3-4-4.1 The statute of limitations otherwise applicable to a criminal act is tolled where:

a The criminal act is concealed; or

b The victim is under the influence of a person in a position of trust.

3-4-5 Speedy Trial

3-4-5.1 Trial must be commenced within one (1) year after the arraignment. The following actions shall toll the speedy trial clock:

a The defendant absconds from the jurisdiction of the Fort Berthold Indian Reservation; or

b The defendant fails to appear for proceedings subsequent to arraignment.

3-5 Bail

3-5-1 Definitions

3-5-1.1 As used in this chapter, unless the context otherwise requires:

a "Bail Bond Agent" means any person who has obtained a business license from the TAT and registered bond information with the Tribal Employment Rights Office (TERO) which shows appointment by an insurer, by power of attorney, to execute or countersign bail bonds for the insurer in connection with the judicial proceedings and charges and receives money for this service.

b " Commissioner" means the Tribal Employment Rights Director.

c "Bail" is to obtain release of a person charged with an offense by ensuring future attendance in Tribal court through security being taken and compelling the accused to remain within the jurisdiction of the Tribal court.

d "Bail Bond" is a written undertaking, executed by the defendant or one or more sureties, that the defendant will render himself amenable to the processes of the Tribal court, and that in the event he fails to do so, the signers of the bond will pay to the court the amount of money specified in the order fixing bail.

3-5-2 License Required

3-5-2.1 No individual, individual, partnership, corporation, or limited liability company may engage in the provision of any bail bond without –

a Obtaining a business license to conduct business on the Fort Berthold Indian Reservation from the Three Affiliated Tribes; and

b Submitting proof, as part of the TERO licensing process, of appointment by an insurer, by power of attorney, to execute or countersign bail bonds for the insurer in connection with judicial proceedings and charged offenses; and

c Submitting proof of authority to receive money for such an insurer for the extension of bail bond services.

d No license is required of a private person who may post bail for a relative or friend of the person subject to such bail restriction.

3-5-3 Persons Disqualified as Bail Bond Agents

3-5-3.1 The following persons or classes may not be bail bond agents and may not directly or indirectly receive any benefits from the execution of any bail bond: jailers, police officers, magistrate judges, court judges, and court personnel of the Three Affiliated Tribes Tribal Court, sheriffs, deputy sheriffs, or any person having the power to arrest, or having anything to do with the control of tribal, federal, or state prisoners.

3-5-4 Bail

3-5-4.1 Any person charged with a criminal offense may be eligible for bail by the Three Affiliated Tribes Tribal Court, at any time prior to final judgment or pending appeal to the MHA Supreme Court, in accordance with the provisions of this chapter. If bail is not met, the defendant shall be confined pending the outcome of the criminal proceedings.

3-5-5 Bail Hearing

3-5-5.1 A bail hearing must be held by a Tribal court judge or magistrate judge when a person is charged with a Class 1 Misdemeanor or Felony offense. All Class 2, 3, and 4 Misdemeanor offenses will be set through a Tribal bonding schedule which will be set by the Chief Judge and Chief of Police with review and approval authority by the Tribe's Judicial Committee. The Tribal bonding schedule shall be reviewed annually and made available to the public.

3-5-6 Taking of Bail

3-5-6.1 The taking of bail consists of the acceptance by the Tribal court of sufficient cash in the form of a money order or cashier's check, or surety bond to ensure the appearance of the defendant. Bond may be posted with law enforcement by means of depositing one hundred percent (100%) of the bond in the form of a money order, cashier's check, or using the services of a licensed bonding agent. Law enforcement shall forward such money order, cashier's check, or notice of bond to the Tribal court.

3-5-7 Bond Forfeiture and Enforcement

3-5-7.1 Bail bond agents shall be notified by the clerk of court, in writing by certified mail, return receipt requested, within five (5) days of the defendant's appearance or failure to appear. The bail bond agent shall then have no more than sixty (60) calendar days to submit one hundred percent (100%) of the established bond schedule amount to the court. However, should the bail bond agent locate and physically bring or cause to be brought to the court the defendant who failed to appear within the sixty (60) day period, the bail bond agent may petition the court for a return of the forfeited bond, but shall be responsible for paying five percent (5%) of the bail amount for court costs. Upon filing, the clerk of court shall enter in the register of actions the date and amount of the bond, and the name or names of the surety thereon for the bond.

3-5-7.2 Pursuant to subsection 3-1-9.8 of this code, the court may direct a forfeiture to be set aside if it appears justice does not require the enforcement of the forfeiture:

a Enforcement - If a forfeiture has not been set aside, the court shall enter a judgment of default and execution may issue thereon.

3-5-8 Setting of Bail

3-5-8.1 Bail shall be fixed in such amount and in such form as, in the judgment of the Tribal court, will ensure the presence of the defendant in court proceedings of the case. When setting the bail, the Tribal court judge or magistrate judge shall take into consideration:

a The nature and circumstances of the offense charged.
b The character and reputation of the defendant.
c The previous criminal record of the defendant.

d The probability of the defendant appearing at the hearing or trial of the case; and
e The safety of the victims, tribal members, and general public.

3-5-8.2 In no case shall bail exceed four (4) times the maximum fine for the offense charged.

3-5-9 Release of Defendant

3-5-9.1 Upon the execution of the requisite recognizance or bail bond, the Tribal court shall issue an order for the release of the defendant. Upon the delivery of such an order to a law enforcement officer, the defendant shall be released upon the terms and conditions contained in the court order.

3-5-10 Forfeiture of Bail

3-5-10.1 If the defendant fails to appear in court as lawfully required, the court shall direct an entry of such failure and forfeiture of bail to be made on the record, without further proceedings. The court shall thereafter issue a warrant for the arrest of the defendant.

3-5-11 Return of Bail

3-5-11.1 Any security, given by the surety or the defendant, must be returned within five (5) working days of a dismissal, not guilty verdict, or upon sentencing, unless the sentence is appealed, then upon five (5) working days of the appellate decision.

3-6 Defenses

3-6-1 Definitions

3-6-1.1 In this chapter, unless a different meaning is plainly required:

a "Deadly Force" means force which the actor uses with the purpose of causing or which he knows to create a substantial risk or causing death or serious bodily harm. Purposely firing a firearm in the direction of another or another person is believed to constitute deadly force. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the actor's purpose is limited to creating an apprehension that he will use deadly force, if necessary, does not constitute deadly force.

b "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being the actor's home or place of lodging.

c "Force" means physical action, threat, or menace against another, and includes confinement.

d "Intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body.

e "Premises" means all or any part of a building or real property, or any structure, vehicle watercraft, or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein.

f "Self- induced intoxication" means intoxication caused by substances which the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical device or under such circumstance as would afford a defense to a charged crime.

g "Unlawful Force" means force, including confinement, which is employed without the consent of the person against whom it is directed, and the employment of which constitutes an offense or actionable tort or would constitute such offense except for a defense not mounting to a privilege to use the force. Assent constitutes consent, within the meaning of this code, whether it otherwise is legally effective, except assent to the infliction of death or serious bodily harm.

3-6-2 Excuse or Mistake

3-6-2.1 Excuse

A person's conduct is excused if he believes that the facts are such that his conduct is necessary and appropriate for any of the purposes which would establish a justification or excuse under this code, even though his belief is mistaken. However, if his belief is negligently or recklessly held, it is not an excuse in a prosecution for an offense, for which negligence or recklessness suffices the established culpability. Excuse under this section is a defense or affirmative defense according to which type of defense would be established had the facts been as the person believed them to be.

3-6-2.2 Mistake of Law

Except as otherwise expressly provided, a person's good faith belief that conduct does not constitute a crime is an affirmative defense, if he acted in a reasonable reliance upon a statement of the law contained in:

a A statute of other enactment.
b A judicial decision, opinion, order, or judgment.
c An administrative order or grant of permission.

3-6-2.3 Mistake of Fact

Mistake of fact is a mistaken understanding or belief about a material fact or event that leads to an illegal act. It is a defense to a crime if the mistake, if true, would negate a mental state that is an element of the crime. Mistakes of fact can involve mistakes about a person's identity, characteristics, ownership of property, or existence of an event.

It is no defense to a charge of statutory rape that the defendant was mistaken as to the age of the victim.

3-6-3 Intoxication

3-6-3.1 Except as provided in subsection 3-6-3.4, intoxication of the actor is not a defense unless it negates an element of the offense.

3-6-3.2 When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial.

3-6-3.3 Intoxication does not constitute mental disease within the meaning of section 3-7-1.

3-6-3.4 Intoxication which is not self-induced is an affirmative defense if by reason of such intoxication, the actor at the time of his conduct lacked substantial capacity either to appreciate its criminality (wrongfulness) or to conform his conduct to the requirements of law.

3-6-3.5 Voluntary intoxication is a valid defense only to specific intent crimes.

3-6-4 Duress

3-6-4.1 It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable belief in his situation would have been unable to resist.

a The defense provided by this section is unavailable if the actor recklessly placed himself in a situation in which it was probable that he would be subjected to duress.

The defense is also unavailable if he was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability of the offense charged.

b It is not a defense that the actor acted on the command of a spouse, unless the actor acted under such coercion as would establish a defense under this section.

c When the conduct of the actor would otherwise be justifiable under section 3-6-9, this subsection does not preclude such defense.

3-6-5 Military Orders

3-6-5.1 It is an affirmative defense that the actor, in engaging in the conduct charged to constitute an offense, did no more than execute an order of his superior in the armed services which he did not reasonably know to be unlawful.

3-6-6 Consent

3-6-6.1 The consent of the victim to conduct which constitutes an offense or to the result thereof, is a defense, if such consent negates an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

3-6-6.2 When conduct is charged to constitute an offense because it causes or threatens to cause bodily harm, consent to such conduct or to the infliction of such harm is a defense if:

a The bodily harm consented to or threatened by the conduct consented to, is not serious;

b Conduct and harm are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport, or to any concerted activity of a kind forbidden by law; or

c The consent establishes a justification for the conduct under subsection 3-6-6.3 of this code.

3-6-6.3 Unless otherwise provided by this code or by the law defining the offense, assent does not constitute consent if:

a It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense;

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

c It is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

3-6-7 De Minimis Infractions

3-6-7.1 The court shall dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds the defendant's conduct:

a Was within a customary license to tolerate, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense; or

b Presents such other extenuations that it cannot reasonably be regarded as foreseen by the legislature in forbidding the offense.

c The court shall not dismiss a prosecution under subsection (b) above without filing a written statement of its reasons.

3-6-8 Entrapment

3-6-8.1 A public law enforcement official or a person acting in cooperation with such an official, perpetuates an entrapment, if for the purpose of obtaining evidence of the commission of an

offense, he induces or encourages another person to engage in conduct constituting such offense by either:

a Making knowingly false representation designed to induce the belief that such conduct is not prohibited; or

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

3-6-8.2 Except as provided in subsection 3-6-8.3 of this section, a person prosecuted for an offense shall be acquitted if he proves by a preponderance of evidence that his conduct occurred in response to an entrapment. The defense issue of entrapment shall be tried by the court in the absence of the jury. The defense afforded by this section is unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

3-6-8.3 The defense afforded by this section is unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

3-6-9 Justification Generally – Choice of Evil

3-6-9.1 Except as otherwise expressly provided, justification or excuse under this chapter is a defense. Conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable, provided that:

a The harm or evil sought to be avoided by such conduct is not greater than that sought to be prevented by the law defining the offense charged.

b Neither the code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and

c A legislative purpose to exclude the justification claimed does not otherwise plainly appear.

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

3-6-10 Justification and Affirmative Defense – Civil Remedies Unaffected

3-6-10.1 In any prosecution based on conduct which is justifiable under this chapter, justification is an affirmative defense.

3-6-10.2 The fact that conduct is justifiable under this chapter does not abolish or impair any remedy for such conduct which is available in any civil action.

3-6-11 Execution of Public Duty

3-6-11.1 Conduct engaged in by a public servant in the course of the person's official duties is justified when it is required or authorized by law, or:

a The law governing the execution of legal process;

b The judgment or order of a competent court or tribunal;

c The law governing the armed services of the lawful conduct of war; or

d Any other provision of law imposing a public duty.

3-6-11.2 A person who has been directed by a public servant to assist that public servant is justified in using force to carry out the public servant's direction, unless the action directed by the public servant is plainly unlawful.

3-6-11.3 An actor is justified in using force upon another to affect that person's arrest or prevent that person's escape when a public servant authorized to make the arrest or prevent the escape is not available if the other person has committed, in the presence of the actor, any crime which the actor is justified in using force to prevent, or if the other person has committed a felony involving force or violence.

3-6-11.4 Conduct engaged in by an individual at the direction of a public servant, known by that individual to be a law enforcement officer, to assist in the investigation of a criminal offense is justified unless the individual knows or has a firm belief, unaccompanied by substantial doubt, that the conduct is not within the law enforcement officer's official duties or authority. For purposes of this subsection, conduct "not within the law enforcement officer's official duties or authority" is conduct in which the law enforcement officer could not lawfully engage in that officer's official capacity. When practicable, permission must be obtained from a parent or guardian of a minor who is under the age of eighteen (18) years and is neither married nor in the military service of the United States before the minor may engage in conduct, other than the providing of information, to assist in a criminal investigation under the direct supervision of a public servant.

3-6-12 Use of Force in Self-Defense

3-6-12.1 Subject to provision of this section, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person in the present encounter.

3-6-12.2 The use of force is not justifiable under this section:

a To resist an arrest, to avoid execution of process, or other performance of duty by a public servant under color of law; or

b To resist force used by the occupier or possessor of property or by another person on his behalf where the actor knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if the actor is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest.

3-6-12.3 To resist force used by the occupier or possessor of property or by another person on his behalf, where the actor knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if the actor is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest. The use of deadly force is not justifiable under this section unless the actor believes that such force is necessary to protect himself against death, serious bodily harm, kidnapping, or sexual assault compelled by force or threat; nor is it justifiable if:

a The actor, with the purpose of causing death or serious bodily harm, provoked the use of force against himself in the same encounter; or

b The actor knows that he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with demand that he abstain from any action which he has no duty to undertake except that:

(i) The actor is not obligated to retreat from his dwelling or place of work unless he was the initial aggressor or is assaulted in his place of work by another person the actor knows to be wrongfully present; or

(ii) The actor is a public officer justified in using force in the performance of his duties or a person justified in using force in his assistance or a person justified in using

force in making an arrest or preventing such escape because of resistance or threatened resistance by or on behalf of the person against whom such action is directed; or

(iii) The actor has entered into mutual combat with another person or is the initial aggressor unless he is resisting force which is clearly excessive in the circumstances. A person's use of defensive force after he withdraws from an encounter and indicates to the other person that he has done so is justified if the latter nevertheless continues or menaces unlawful action.

3-6-12.4 The justification afforded by this section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can unless the person confined has been arrested on a charge of crime.

3-6-13 Use of Force for the Protection of Other Persons

3-6-13.1 Subject to the provision of this section and of section 3-6-12, the use of force upon or toward the person of another is justifiable to protect a third person when:

a The person defended would be justified in defending himself;

b The actor believes that his intervention is necessary for the protection of such other person; and

c The person coming to the defense has not, by provocation or otherwise, forfeited the right of self-defense.

3-6-14 Use of Force for the Protection of Property

3-6-14.1 Subject to the provision of this section and section 3-6-2 the use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary:

a To prevent or terminate an unlawful entry or other trespass upon land or a trespass against or the unlawful carrying away of tangible, moveable property, provided that such land or moveable property is, or is believed by the actor to be, in his possession or in the possession of another person for whose protection he acts; or

b To affect an entry or re-entry upon land or to retake tangible moveable property, provided that the actor believes that he or the person by whose authority he acts or a person from whom he or such other person derives title was unlawfully dispossessed of such land or movable property and is entitled to possession, and provided, further, that:

(i) The force is used immediately or on fresh pursuit after such dispossession; or

(ii) The actor believes that the person against whom he uses force has no claim of right to the possession of the property and, in the case of land, the circumstances, as the actor believes that to be, are of such urgency that it would be an exceptional hardship to postpone the entry or re-entry until a court order is obtained.

3-6-14.2 For purposes of subsection 3-6-14.1 of this section:

a A person who has parted with the custody of the property to another who refuses to restore it to him is no longer in possession, unless the property is moveable and, was and still is, located on the land of the person's possession.

b A person who has been dispossessed of land does not regain possession thereof merely by setting foot thereon.

c A person who has a license to use or occupy real property is deemed to be in possession thereof except against the licensor acting under claim or right.

3-6-14.3 Limitation of Justifiable Use of Force

a The use of force is justifiable under this section only if the actor first requests the person against whom such force is used to desist from his interference with the property, unless the actor believes that:
   (i) Such request would be useless; or
   (ii) It would be dangerous to himself or another person to make the request.

b The use of force to prevent or terminate a trespass is not justifiable under this section if the actor knows that the exclusion of the trespasser will expose him to substantial danger of serious bodily harm.

c The use of deadly force is not justifiable under this section unless the actor believes that the person against whom the force is used:
   (i) Is attempting to dispossess him of his dwelling other than under a claim of right to its possession; or
   (ii) Is attempting to commit or consummate arson; or
   (iii) Has employed or threatened deadly force against or in the presence of the actor; or
   (iv) The use of force, other than deadly force, is necessary to prevent the commission or the consummation of a crime which would expose the actor or another in his presence to substantial danger of serious bodily harm.

d The justification afforded by this section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he can do so safely unless the person confined has been arrested on a charge of a crime.

e The justification afforded by this section extends to the use of a device for the purposes of protecting property only if:
   (i) The device is not designed or used in such a manner to cause or known to create a substantial risk of causing death or serious bodily harm; and
   (ii) The use of the particular device to protect the property from the entry or trespass is reasonable under the circumstances, as the actor believes them to be; and
   (iii) The device is one customarily used for such a purpose or reasonable care is taken to make known to probable intruders the fact that it is used.

f The use of force to pass a person whom the actor believes to be purposely or knowingly and unjustifiably obstructing the actor from going to a place to which he may lawfully go is justifiable, provided that:
   (i) The actor believes that the person against whom he uses force has no claim of right to obstruct the actor;
   (ii) The actor is not being obstructed from entry or movement on land which he knows to be in the possession or custody of the person obstructing him, or in the possession or custody of another person by whose authority the obstructer acts, unless the circumstances as the actor believes them to be are of such urgency that it would not be reasonable to postpone the entry or movement on such land until a court order is obtained; and
   (iii) The force used is not greater than would be justifiable if the person obstructing the actor were using force against him to prevent his passage.

3-6-15 Use of Force in Law Enforcement

3-6-15.1 The use of force by a law enforcement officer upon or toward the person of another is justifiable when the officer is making or assisting in making a lawful arrest and the officer believes that such force is immediately necessary to effect a lawful arrest.

3-6-15.2 The use of force is not justifiable under this section unless:

a The officer makes known the purpose of the arrest or believes that it is otherwise known by or can reasonably be made known to the person to be arrested; and

b When the arrest is made under a warrant, and the warrant is valid or believed by the officer to be valid.

3-6-15.3 The use of deadly force is not justifiable under this section unless:

a The arrest is for a felony; and

b The officer effecting the arrest is authorized to act as a law enforcement officer; and

c The officer believes that the force employed creates no substantial risk of injury to innocent persons; and

d The officer believes that:

(i) The crime for which the arrest is made involved conduct including the use or threatened use of deadly force; or

(ii) There is substantial risk that the person to be arrested will cause death or serious bodily harm if his apprehension is delayed.

3-6-15.4 The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a law enforcement officer is justified in using any force, including deadly force, which he believes to be necessary to prevent escape from a facility used for the detention of persons charged with or convicted of a crime.

3-6-15.5 The use of force upon or toward the person of another is justifiable when the officer believes that such force is immediately necessary to prevent such other person from committing suicide, or threatening bodily harm, damage to or loss of property or a breach of the peace, except that:

a Any limitations imposed by the other provisions of this chapter on the justifiable use of force in self-protection of property, the effectuation of an arrest or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which such force is used; and

b The use of deadly force is not, in any event, justifiable under this subsection unless:

(i) The officer believes that there is a substantial risk that the person who he seeks to prevent from committing a crime will cause death or serious bodily harm to another unless the commission or the consummation of the crime is prevented and that the use of force presents no substantial risk of injury to innocent persons; or

(ii) The officer believes that the use of such force is necessary to suppress a riot or mutiny after the rioters or mutineers have been ordered to disperse and warned, in any particular manner that the law may require, that such force will be used if they do not obey.

3-6-15.6 The justification afforded by this section extends to the use of confinement as preventive force only if the officer takes all reasonable measures to terminate the confinement as soon as he knows that he safely can unless the person confined has been arrested on a charge of a crime.

3-6-16 Use of Force by Persons with Parental, Custodial, or Similar Responsibilities

3-6-16.1 The use of reasonable force upon a minor is justified under any of the following circumstances:

a When the actor being a parent, guardian, or other person responsible for the care and supervision of a minor, or other person responsible for the care and supervision of a minor for a special purpose, or person acting at the direction of any of the foregoing persons, may use reasonable force upon the minor for the purpose of safeguarding or

promoting the minor's welfare, including prevention and punishment of the minor's misconduct, and the maintenance of proper discipline.

b If the person using reasonable force for the prevention and punishment of the minor's misconduct or the maintenance of proper discipline is a paid caregiver, that person must be acting under written direction of the parent or guardian of the minor.

c The reasonable force used may not create a substantial risk of death, serious bodily injury, disfigurement, extreme pain, mental distress, or gross degradation.

d A guardian or other person responsible for the care and supervision of an individual who is incompetent, or a person acting at the direction of the guardian or responsible person, may use reasonable force upon the individual for the purpose of safeguarding or promoting the welfare of the individual, including the prevention of the individual's misconduct, or if the individual is in a hospital or other institution for care and custody, for the reasonable discipline in the institution. The force used may not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.

3-6-16.2 A person responsible for the maintenance of order in a vehicle, train, vessel, aircraft, or other carrier, or in a place in which others are assembled, or a person acting at the responsible person's direction, may use force to maintain order.

3-6-16.3 A duly licensed physician, or a person acting at a duly licensed physician's direction, may use force to administer a recognized form of treatment to promote the physical or mental health of a patient if the treatment is administered:

a In an emergency.

b With the consent of the patient, or, if the patient is a minor or an individual who is incompetent, with the consent of the patient's parent, guardian, or other person entrusted with the patients care and supervision; or

c By order of a court of competent jurisdiction.

d A person may use force upon an individual about to commit suicide or suffer serious bodily injury, to prevent the death or serious bodily injury of that individual.

3-6-17 Justification in Property Crimes

3-6-17.1 Conduct involving the appropriation, seizure, destruction, or damage to, intrusion on or interference with property is justifiable under circumstances which would establish a defense or privilege in a civil action based thereon, unless:

a This code or law defining the offense deals with the specified situation involved; or

b A legislative purpose to exclude the justification claimed otherwise plainly appears.

3-7 Criminal Responsibility

3-7-1 Mental Disease or Defect Excluding Responsibility

3-7-1.1 A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or conform his conduct to the requirements of law.

3-7-1.2 As used in this chapter, the terms, "mental disease or defect", do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

3-7-2 Evidence of Mental Disease or Defect Admissible When Relevant to Element of the Offense

3-7-2.1 Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of offense.

3-7-3 Mental Disease or Defect Excluding Responsibility is Affirmative Defense: Requirement of Notice: Form of Verdict and Judgment When Finding of Irresponsibility is Made

3-7-3.1 Mental disease or defect excluding responsibility is an affirmative defense.

3-7-3.2 Evidence of mental disease or defect excluding responsibility is not admissible unless the defendant, at the time of entering his plea of guilty or within ten (10) days thereafter or at such time as the court may for good cause permit, files a written notice of the purpose to rely on such defense.

3-7-3.3 When the defendant is acquitted on the grounds of mental disease or defect excluding responsibility, the verdict and the judgment shall so state.

3-7-4 Mental Disease or Defect Excluding Fitness to Proceed

3-7-4.1 No person who, because of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

3-7-5 Psychiatric Examination of Defendant with Respect to Mental Disease or Defect

3-7-5.1 Whenever the defendant has filed a notice of intention to rely on the defense of mental disease or defect excluding responsibility, or there is reason to doubt his fitness to proceed, or reason to believe that mental disease or defect of the defendant will otherwise become an issue in the proceeding?, the court shall appoint at least one qualified psychiatrist to examine and report the mental condition of the defendant. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding sixty (60) days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist, retained by the defendant, be permitted to witness, and participate in the examination.

a In such an examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

b The report of the examination shall include the following:

(i) A description of the nature of the examination.

(ii) A diagnosis of the mental condition of the examination.

(iii) If the defendant suffers from a mental disease or defect, psychiatrist shall include an opinion as to the defendant's capacity to understand and assist in his own defense.

(iv) When directed by the court, an opinion as to the capacity of the defendant to have state of mind which is an element of the offense charged.

c If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to where such unwillingness of the defendant was the result of mental disease or defect. The report of the examination shall be filed with the clerk of court who shall cause copies to be delivered to the Tribal prosecutor and to counsel for the defendant.

3-7-6 Determination of Fitness to Proceed; Effect of Finding of Unfitness; Proceeding if Fitness is Regained

3-7-6.1 When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed pursuant to section 3-7-5, the court shall hold a hearing on the issue. If the report is received as evidence upon such hearing, the party who contests the finding thereof shall

have the right to summon and to cross examine the psychiatrists who drafted the report and to offer evidence upon the issue.

3-7-6.2 If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended except as provided in subsection 3-7-6.3 of this section, and the court shall commit him to the appropriate institution by order for so long as such unfitness shall endure. When the court, on its own motion or upon the application of the tribal prosecutor, determines after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceeding, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of person suffering from mental disease or defect, order the defendant to be committed to the appropriate institution.

3-7-6.3 The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible of fair determination prior to trial and without the personal participation of the defendant.

3-7-7 Determination of Responsibility on Basis of Report; Access to Defendant by Psychiatrist of His Own Choice

3-7-7.1 If the report filed pursuant to section 3-7-5 finds that the defendant, at the time of the criminal conduct charged, suffered from a mental disease or defect which substantially impaired his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, and the court, after a hearing, if a hearing is requested by the Tribal prosecutor or the defendant's attorney, is satisfied that such impairment was sufficient to exclude responsibility, the court on motion of the defendant's attorney shall enter judgment of acquittal on the ground of mental disease or defect excluding responsibility.

3-7-7.2 When, notwithstanding the report filed pursuant to section 3-6-5, the defendant wishes to be examined by a qualified psychiatrist or other expert of the defendant's own choice, such examiner shall be permitted to have reasonable access to the defendant for the purpose of such examination.

3-7-8 Form of Expert Testimony When Issue of Responsibility Brought to Trial

3-7-8.1 Upon the trial, the psychiatrist who reported pursuant to section 3-6-5 may be called as a witness by the prosecution, the defendant's attorney, or the court. On the issue of defendant's responsibility being tried before a jury, the jury may be informed that the psychiatrist(s) were designated by the court or the superintendent of the hospital at the request of the court, as the case may be. If called by the court, the witness shall be subject to cross-examination by the prosecution and by the defendant's attorney. Both the prosecution and the defendant's attorney may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant shall be competent to testify to an expert opinion with respect to the mental condition or responsibility of the defendant, as distinguished from the validity of the procedure followed by, or the general scientific proposition stated by, another witness.

3-7-8.2 When a psychiatrist or other expert who has examined the defendant testifies concerning defendant's mental condition, the psychiatrist shall be permitted to make a statement as to the nature of the defendant's mental condition, and the psychiatrist's examination, the psychiatrist's diagnosis of the mental condition of the defendant at the time of the criminality of the defendant's conduct, or for the defendant to conform his conduct to the requirements of law, or for the defendant to have a particular state of mind, which is an element of the offense charged,

which may or may not have been impaired as a result of mental disease or defect at that time. The psychiatrist shall be permitted to make an explanation reasonably serving to clarify the psychiatrist's diagnosis and opinion and may be cross-examined as to any matter bearing on the psychiatrist's competency, credibility, or the validity of the psychiatrist's diagnosis or opinion.

3-7-9 Legal Effect of Acquittal on the Grounds of Mental Disease or Defect Excluding Responsibility; Commitment; Release or Discharge

3-7-9.1 When a defendant is acquitted on the grounds of mental disease or defect excluding responsibility, the court shall order him to be committed to the custody of the appropriate institution for care and treatment.

3-7-9.2 If the director of the custodial institution is of the view that a defendant committed to his custody, pursuant to subsection 3-7-9.1, may be discharged or released on conditions without danger to himself or to others, the director shall make an application for the discharge or release of the defendant in a report to the court by which the defendant was committed and shall transmit a copy of such application and report to the court and tribal prosecutor. The court shall thereupon appoint at least two qualified psychiatrists to examine the defendant and to report within sixty (60) days, or a such longer period as the court determines to be necessary for the purpose, of their opinion as to the defendant's mental condition.

3-7-9.3 If the court is satisfied by the report filed pursuant to subsection 3-7-9.2 and such testimony of the reporting psychiatrists as the court deems necessary, that the defendant may be discharged or released on conditions without danger to himself or others, the court shall order the defendant's discharge or release on such conditions as the court determines to be necessary. If the court is not so satisfied, it shall promptly order a hearing to determine whether the defendant may safely be discharged or released. According to the determination of the court upon the hearing, the defendant shall thereupon be discharged or released on such conditions as the court determines to be necessary or shall be recommitted to the custody of the director of the custodial institution, subject to discharge or release, only in accordance with the procedure prescribed above in subsection 3-7-8.2.

3-7-9.4 If, within one year or sooner as the situation may require, after the conditional release of the defendant, the court shall determine, after hearing evidence, that the conditions of release have not been fulfilled and that for the safety of others the defendant's conditional release should be revoked, the court shall forthwith order the defendant to be recommitted to the director of the appropriate custodial institution subject to discharge or release only in accordance with the procedure prescribed above in subsection 3-7-8.2.

3-7-9.5 A committed defendant may make an application for discharge or release to the court by which he was committed, and the procedure to be followed upon such application shall be the same as that prescribed above in subsection 3-7-8.2. However, no such application by the defendant need be considered until he has been confined for not less than one month from the date of the order of commitment. If the determination of the court be adverse to the application, the defendant shall not be permitted to file a further application until two (2) months have elapsed from the date of any preceding hearing on an application for the defendant's release or discharge.

3-7-10 Statement for Purpose of Examination or Treatment Inadmissible Except on Issue of Mental Condition

3-7-10.1 Any statement made by the defendant subjected to psychiatric examination or treatment pursuant to sections 3-7-5, 3-7-6, and 3-7-7 for the purposes of such examination or treatment shall not be admissible in evidence against the defendant in any criminal proceeding on any issue other than that of the defendant's mental condition, whether or not it would otherwise be deemed privileged communication.

3-7-11 Immaturity Excluding Criminal Conviction; Transfer of Proceeding to Juvenile Court

3-7-11.1 A person shall not be tried for or convicted of an offense if:

a At the time of the conduct charged to constitute the offense, he was less than sixteen (16) years of age; or

b At the time of the conduct charged to constitute the offense, he was sixteen (16) or seventeen (17) years of age unless:

(i) The Juvenile Court has no jurisdiction over him; or

(ii) The Juvenile Court has entered an order waiving jurisdiction and transferring for the institution of adult criminal proceedings against him.

c No court shall have jurisdiction to try or convict a person of an offense if criminal proceedings against him are barred by 3-7-11.1(a) or (b) of this section. When it appears that a person charged with the commission of an offense may be of such an age that criminal proceedings may be barred under 3-7-11.1(a) or (b) of this section, the court shall hold a hearing thereon, and the burden shall be on the prosecution to establish to the satisfaction of the court that the criminal proceeding is not barred upon such grounds. If the court determines that the proceeding is barred, custody of the person charged shall be surrendered to the Juvenile Court, and the case, including all papers and processes relating thereto, shall be transferred.

(Legislative History: Resolution #10-02-VJB; #01-63-MWJR; #00-197-DSB; #97-111-DSB; #97-109DSB; #96-169-DSB; #88-187-; #87-168-TL; #77-260; #08-103-MP)

3-8 Inchoate Crimes

3-8-1 Criminal Attempt

3-8-1.1 A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the crime.

a A substantial step under this section is any conduct which is strongly corroborative of the firmness of the actor's intent to complete the commission of the crime.

b The factual or legal impossibility of committing the crime is not a defense, if the crime could have been committed had the attendant circumstances been as the actor believed them to be.

3-8-1.2 A person who engages in conduct designed to aid another to commit a crime which would establish his complicity under section 3-2-26 if the crime were committed by such other person, is guilty of an attempt to commit the crime, although the crime is not committed or attempted by such other person.

3-8-1.3 Renunciation of Criminal Purpose

a When the actor's conduct would otherwise constitute an attempt under subsection 3-8-1.1 of this section, it is an affirmative defense that he abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The establishment of

such a defense does not, however, affect the liability of an accomplice who did not join in such abandonment or prevention.

b Within the meaning of this chapter, renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances not present or apparent at the inception of the actor's course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.

3-8-2 Criminal Solicitation

3-8-2.1 A person is guilty of criminal solicitation if he commands, induces, encourages, requests, or persuades another person to commit a crime, whether as principal or accomplice, with intent to promote or facilitate the commission of the offense, under circumstances strongly corroborative of that intent, and if the person solicited commits an overt act in response to the solicitation.

3-8-2.2 It is an affirmative defense that the actor, after soliciting another person to commit a crime, persuaded him not to do so or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

3-8-3 Criminal Conspiracy

3-8-3.1 A person is guilty of conspiracy if he agrees with one or more persons to engage in or cause conduct which, in fact, constitutes a criminal offense or offenses, and any one or more of such persons does an overt act to affect an objective of the conspiracy. The agreement need not be explicit in the fact of collaboration or existence of other circumstances.

3-8-3.2 If a person guilty of conspiracy, as defined by subsection 3-8-3.1, knows, or could expect that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, whether or not he knows their identity, to commit such crime.

3-8-3.3 If a person conspires to commit multiple crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

3-8-3.4 A conspiracy shall be deemed to continue until its objectives are accomplished, frustrated, or abandoned. Objectives include escape from the scene of the crime, distribution of booty, and measures, other than silence, to conceal the crime or obstructing justice in relation to the crime. A conspiracy shall be deemed to be abandoned if no overt act to affect its objectives has been committed by any conspirator during the applicable statute of limitations.

3-8-3.5 Joinder and Venue in Conspiracy Prosecutions

a Subject to the provisions of subsection 3-8-3.5(b) of this subsection, two or more persons charged with criminal conspiracy may be prosecuted jointly if:
   (i) They are charged with conspiring with one another; or
   (ii) The conspiracies alleged, whether they have the same or different parties, are so related that they constitute various aspects of a scheme of organized criminal conduct.

b In any joint prosecution under this subsection:
   (i) A defendant shall be charged with a conspiracy in the Fort Berthold Indian Reservation if he entered into such conspiracy within the exterior boundaries of

the Reservation or an overt act pursuant to such conspiracy was completed or attempted by him or by a person with whom he conspired within the exterior boundaries of the Reservation; and

(ii) Neither the liability of any defendant nor the admissibility against him of the evidence of acts or declarations of another shall be enlarged by such joinder; and

(iii) The court shall order a severance or take a special verdict as to any defendant who so requests, if it deems it necessary or appropriate to promote the fair determination of his guilt or innocence and shall take any other proper measures to protect the fairness of the trial.

3-8-3.6 Overt Act

No person may be convicted of conspiracy to commit a crime, other than a misdemeanor, unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

3-8-3.7 Renunciation of Criminal Purpose

It is an affirmative defense that the actor, after conspiring to commit a crime, thwarted the success of the conspiracy under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

3-8-4 Incapacity, Irresponsibility, or Immunity of Party to Solicitation or Conspiracy

3-8-4.1 Except as provided in subsection 3-8-4.2 of this section, it is immaterial to the liability of a person who solicits or conspires with another to commit a crime that:

a The person whom he solicits or with whom he conspires does not possess a particular characteristic which is an element of such crime, if he believed that one of them does; or

b The person whom he solicits or with whom he conspires is irresponsible or has immunity from prosecution or conviction for the commission of the crime.

3-8-4.2 It is a defense to a charge of solicitation or conspiracy to commit a crime that if the criminal object were achieved, the actor would not be guilty of a crime under the law defining the offense or as an accomplice under section 3-2-26.

3-8-5 Grading of Criminal Attempt, Solicitation, and Conspiracy; Mitigation in Offense Conduct; Multiple Convictions Barred

3-8-5.1 Grading

Except as otherwise provided in this section, attempt, solicitation, and conspiracy are crimes of the same grade and degree as the most serious offense which is attempted or solicited or an object of the conspiracy, except that, whenever it is established by a preponderance of the evidence at sentencing that the conduct constituting the attempt, solicitation, or conspiracy did not come dangerously close to commission of the crime, the offense level shall be one grade level lower than the attempted crime.

3-8-5.2 Mitigation

If the particular conduct charged to constitute a criminal attempt, solicitation, or conspiracy is so inherently unlikely to result or culminate in the commission of a crime that neither such conduct nor the actor presents a public danger warranting the grading of such offense under this section, the court shall exercise its power under subsection 3-8-5.1 to enter judgment or impose sentence for a crime of lower grade or degree or, in extreme cases, may dismiss the prosecution.

3-8-5.3 Multiple Conviction – A person may not be convicted of more than one offense defined by this chapter for conduct designed to commit or to culminate in the commission of the same crime.

3-9 Offenses, Penalties, and Sentencing

3-9-1 Tribal Law and Order Act Enactment

3-9-1.1 Pursuant to the Tribal Law and Order Act of 2010 and the provisions of 25 U.S.C §1302, the Three Affiliated Tribes does herein enact this enhanced penalty provision, together with any amendments which may be made thereto after the date of enactment.

3-9-2 Classification of Offenses – Penalties

3-9-2.1 The following is the classification of imprisonment and fines which may be imposed by the court for sentencing purposes:

a Felony, a maximum penalty of three (3) years imprisonment, a maximum fine of five thousand (5,000) dollars, or both. The sentence may not exceed a total sentence of nine (9) years for multiple counts of conviction, a maximum fine of up to fifteen thousand (15,000) dollars or both.

b Class 1 Misdemeanor, a maximum penalty of one (1) year imprisonment, a maximum fine of two thousand five hundred (2,500) dollars, or both.

c Class 2 Misdemeanor a maximum penalty of six (6) months imprisonment, a maximum fine of one thousand (1,000) dollars, or both.

d Class 3 Misdemeanor, a maximum penalty of ninety (90) days imprisonment, a maximum fine of seven hundred fifty (750) dollars, or both.

e Class 4 Misdemeanor, a maximum penalty of thirty (30) days imprisonment, a maximum fine of five hundred (500) dollars, or both.

3-9-3 Authority of Court in Sentencing

3-9-3.1 The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment:

a The defendant's criminal conduct caused or threatened serious harm to another person or his property;

b The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property;

c The defendant acted under strong provocation;

d The victim of the defendant's conduct induced or facilitated its commission;

e The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained;

f The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense;

g The defendant's conduct was the result of circumstances unlikely to recur;

h The character, history, and attitudes of the defendant indicate that he is unlikely to commit another crime;

i The defendant is particularly likely to respond affirmatively to probationary treatment;

j The imprisonment of the defendant would entail undue hardship to himself or his dependents.

k The defendant is elderly or in poor health; and

l The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

3-9-4 Authorized Disposition of Offenders

3-9-4.1 All persons convicted of an offense shall be sentenced in accordance with the provisions of this chapter. The court may suspend the imposition of a sentence on a person who has been convicted of a crime, or may order that he be committed to treatment in lieu of sentence, in accordance with section 3-7-1 or may sentence him as follows:

a To pay a fine authorized by subsection 3-9-2.1;
b To be placed on probation;
c Imprisonment for a term authorized by subsection 3-9-2.1; or
d To any combination of fine, imprisonment, and probation; and
e In all cases, regardless of the sentence, where deemed appropriate by the Tribal court judge or magistrate judge, order payment of restitution for damages resulting from the commission of the offense.

3-9-4.2 The court may suspend the imposition of a sentence on a person who has been convicted of a violation or may sentence him to pay a fine authorized by subsection 3-9-2.1.

3-9-4.3 This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, or impose any other civil penalty. Such judgment or order may be included in the sentence,

3-9-5 Place of Imprisonment

3-9-5.1 When a person is sentenced to imprisonment for an indefinite term within a maximum of six (6) months, the court shall commit him to the custody of the appropriate official for the term of his sentence and until released in accordance with law.

3-9-5.2 When a person is sentenced to imprisonment for a definite term, the court shall designate the institution or agency to which he is committed for the term of his sentence and until released in accordance with law.

3-9-6 Reduction of Conviction by Court to Lesser Degree of Misdemeanor

3-9-6.1 If, when a person has been convicted of a misdemeanor, the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the view that it would be unduly harsh to sentence the offender in accordance with this code, the court may enter a judgment of conviction for a lesser degree of a misdemeanor and impose sentence accordingly.

3-9-7 Civil Commitment in Lieu of Prosecution or of Sentence

3-9-7.1 When a person, prosecuted for a misdemeanor, is a chronic alcoholic, narcotic addict or person suffering from mental abnormality and the court is authorized by law to order the civil commitment of such person to a hospital or other institution for medical, psychiatric, or other rehabilitative treatment, the court may order such commitment and dismiss the prosecution. The order of commitment may be made after conviction, in which event the court may set aside the verdict or judgment of conviction and dismiss the prosecution.

3-9-7.2 The court shall not make an order under subsection 3-9-7.1 of this section unless it is of the view that it will substantially further the rehabilitation of the defendant and will not jeopardize the protection of the public.

3-9-8 Hearing Prior to Restitution or Reparation Order – Conditions

3-9-8.1 Prior to imposing reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. At or following the hearing, the court shall make determination as to:

a The reasonable damages sustained by the victim or victims of the criminal offense, which damages shall be limited to fruits of the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action;

b The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property; and

c The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitation purpose in the case of the offense.

3-9-8.2 The court shall fix the amount of restitution or reparation and shall fix the manner of performance of any condition or conditions of probation established pursuant to this section. Any payments made pursuant to such order shall be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, if the court so directs, be filed, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner which civil judgments rendered by the courts of this jurisdiction may be enforced.

3-9-8.3 The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged but must be solely for the public benefit.

3-9-9 Imposition of Fine and Response of Nonpayment

3-9-9.1 The court in deciding the propriety of imposing a sentence to pay a fine, shall consider the following factors:

a The ability of the defendant to pay without undue hardship;

b Whether the defendant, other than a defendant organization, gained money or property because of commission of the offense; or

c Whether the sentence to pay a fine will serve a valid rehabilitative purpose.

d Nothing herein shall be deemed to require explicit reference to these factors in a report by the court at the time of sentencing.

3-9-9.2 The court may allow the defendant to pay any fine imposed in installments. When a defendant is sentenced to pay a fine, the court shall not impose at the same time an alternative sentence to be served if the fine is not paid.

3-9-9.3 If the defendant does not pay the fine, or make any required partial payment, the court, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant should not be imprisoned for nonpayment. Unless the defendant shows that his default is excusable, the court may sentence him to the following periods of imprisonment for failure to pay a fine:

a If the defendant was convicted of a misdemeanor, he should have a period not to exceed (30) thirty days.

3-9-10 Multiple Sentences, Concurrent or Consecutive Terms

3-9-10.1 Multiple Sentences of Imprisonment

When multiple sentences of imprisonment are imposed on a defendant for more than one crime, including a crime for which a previous suspended sentence or sentence of probation has been

revoked, such multiple sentences shall run concurrently or consecutively as the court determines at the time of sentence, except that:

a A definite and indefinite term shall run concurrently and both sentences shall be satisfied by service of the indefinite term; and

b The aggregate of consecutive indefinite terms shall not exceed in minimum or maximum length the longest extended term authorized for the highest grade and degree of crimes for which the sentence was imposed.

3-9-10.2 Sentences of Imprisonment Imposed at Separate Times

When a defendant who has previously been sentenced to imprisonment is subsequently sentenced to another term for a crime committed prior to the former sentence, other than a crime committed while in custody:

a The multiple sentences imposed shall, as far as possible, conform to subsection 3-9-10.1 of this section; and

b Whether the court determines that the terms shall run concurrently or consecutively, the defendant shall be credited with time served in imprisonment on the prior sentence in determining the permissible aggregate length of the term remaining to be served.

3-9-10.3 Sentences of Imprisonment for Crime Committed While on Parole

When a defendant is sentenced to imprisonment for a crime committed while on parole on this Reservation, such term of imprisonment and any period of reimprisonment that the Tribal court may require the defendant to serve upon the revocation of his parole shall run concurrently, unless the court orders them to run consecutively.

3-9-10.4 Multiple Sentences of Imprisonment in Other Cases

Except as otherwise provided in this section, multiple terms of imprisonment shall run concurrently or consecutively as the court determines when the second or subsequent sentence is imposed.

3-9-10.5 Multiple Terms of Suspension and Probation

When a defendant is sentenced for more than one offense or a defendant already under sentence is sentenced for another offense, the court must abide as follows:

a The court shall not sentence to probation a defendant who is under a current sentence of imprisonment;

b Multiple periods of imprisonment or probation shall run concurrently from the date of the first such disposition; and

c When a sentence of imprisonment is imposed, any previously imposed suspended sentence or sentence to probation shall run during the period of such imprisonment.

3-9-11 The Court may Order a Pre-Sentence Investigation in any Case

3-9-11.1 Pre-Sentence Investigation

The pre-sentence investigation shall include an analysis of the criminality, physical and mental conditions, family situation and background, economic status, education, occupation, and personal habits and any other matters that the probation officer deems relevant, or the court directs to be included.

3-9-11.2 Psychiatric Observation

Before imposing sentence, the court may order the defendant to submit to psychiatric observation and examination for a period of not exceeding sixty (60) days or such longer period as the court determines to be necessary for the purpose. The defendant may be remanded for this purpose to any available clinic or mental hospital.

3-9-12 Credit for Time of Detention Prior to Sentence; Credit for Imprisonment Under Earlier Sentence for the Same Crime

3-9-12.1 When a defendant who is sentenced to imprisonment has previously been detained in any institution following his conviction of the crime for which sentence is to be imposed, and any such period of detention following his arrest shall be deducted from the defendant's term of such sentence. The officer having custody of the defendant shall furnish a certificate to the court at the time of sentence, showing the length of such detention of the defendant prior to sentence in any institution, and the certificate shall be annexed to the official records of the defendant's commitment.

3-9-12.2 When a judgment of conviction is vacated and a new sentence is thereafter imposed upon the defendant for the same crime, the period of detention and imprisonment theretofore served shall be deducted from the maximum term, and the from the minimum, if any, of the new sentence. The officer having custody of the defendant shall furnish a certificate to the court at the time of sentence, showing the period of imprisonment served under the original sentence, and the certificate shall be annexed to the official records of the defendant's new commitment.

3-10 Offenses Against the Person

3-10-1 Definitions

3-10-1.1 Definitions in this Chapter

Unless a different meaning plainly is required:

a "Abduct" means to restrain a person with the intent to prevent his liberation by:
   (i) Secreting or holding him in a place where he is not likely to be found; or
   (ii) Endangering or threatening to endanger the safety of any human being.

b "Bodily injury" means physical pain, illness, or any impairment of the function of any bodily member, organ, or mental faculty, or other injury to the body, no matter how temporary, or projectile of bodily fluids.

c "Coercion" means to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.

d "Committed Person" means, a person in an addiction treatment facility or anyone committed under judicial warrant order, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person, entrusted to another's custody by or through a recognized social services agency or otherwise by authority of law.

e "Deadly weapon" means any firearm, or other weapon device, instrument, material, or substance, whether animate or inanimate, which in the manner used or is intended to be used is known to be capable of producing death or serious bodily injury.

f "Human being" means a person who has been born and is alive at the time of the criminal act.

g "Restrain" means to restrict the movement of a person unlawfully and without consent as to interfere substantially with his liberty by removing him from his place of residence or business, by moving him a substantial distance from one place to another, or by confining him for a substantial period. Restraint is "without consent" if it is accomplished by:
   (i) Force, intimidation, or deception; or
   (ii) Any means including acquiescence of the victim if he is a child less than eighteen (18) years old or an incompetent person, and if the parent, guardian, or person or institution responsible for the general supervision of his welfare has not acquiesced in the movement or confinement.

h "Serious bodily injury" means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

3-10-2 Murder

3-10-2.1 A person is guilty of murder, a Felony offense, if the actor intentionally or knowingly causes the death of another human being by:

a Causing the death under circumstances manifesting extreme indifference to the value of human life; or

b Acting either alone or with one or more other persons, commits or attempts to commit robbery, burglary, kidnapping, felonious restraint, arson, gross sexual imposition, any felony offense against a child, or escape and, during and in furtherance of such crime or of immediate flight therefrom, the person or any other participant in the crime causes the death of any person.

3-10-3 Manslaughter

3-10-3.1 A person is guilty of manslaughter, a Felony offense, if he recklessly, without malice, causes the death of another human being. Manslaughter is of two kinds:

a Voluntary – Upon a sudden quarrel or heat of passion; or

b Involuntary – In the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due circumspection, of a lawful act which might produce death.

3-10-4 Negligent Homicide

3-10-4.1 A person is guilty of a Felony offense if he negligently causes the death of another human being.

3-10-5 Assisting the Commission of Suicide – Causing Death by Suicide

3-10-5.1 A person who intentionally or knowingly aids, abets, facilitates, solicits, or incites another person to commit suicide, or who provides to, delivers to, procures for, or prescribes for another person any drug or instrument with knowledge that the other person intends to attempt to commit suicide with the drug or instrument is guilty of a Felony offense.

3-10-5.2 A person who through deception, coercion, or duress, willfully causes the death of another person by suicide is guilty of a Felony offense.

3-10-6 Kidnapping

3-10-6.1 A person is guilty of kidnapping, a Felony offense, if he abducts another, or having abducted another, continues to restrain him with intent to do the following:

a Hold him for ransom or reward;

b Use him as a shield or hostage;

c Hold him in a condition of involuntary servitude;

d Terrorize him or a third person;

e Commit a felony or attempt to commit a felony; or

f Interfere with the performance of any governmental or political function.

3-10-7 Felonious Restraint

3-10-7.1 A person is guilty of a Felony offense if he:

a Knowingly abducts another; or

b Knowingly restrains another under terrorizing circumstances or under circumstances exposing him to risk of serious bodily injury; or

c Restrains another with intent to hold him in a condition of involuntary servitude.

3-10-8 False Imprisonment

3-10-8.1 A person is guilty of guilty of a Class 3 Misdemeanor if the actor knowingly restrains another person unlawfully so as to interfere substantially with the liberty of the other person.

(As amended at Section 220.1 by Resolution 96-032-DSB on February 8, 1996),

3-10-9 Assault Resulting in Bodily Injury

3-10-9.1 A person is guilty of a Class 1 Misdemeanor if that person by means of unwanted physical contact:

a Willfully causes bodily harm or injury to another human being; or

b Recklessly causes bodily harm or injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.

3-10-10 Aggravated Assault

3-10-10.1 A person is guilty of a Felony offense if that person by means of unwanted physical contact:

a Willfully causes serious bodily injury to another human being;

b Knowingly causes bodily injury or substantial bodily injury to another human being with a dangerous weapon or other weapon, the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury;

c Knowingly causes bodily injury or substantial bodily injury to another human being while attempting to inflict serious bodily injury on any human being; or

d Knowingly fires a firearm or hurls a destructive device at another human being.

3-10-11 Assault on a Tribal Law Enforcement Officer

A person is guilty of a Felony offense if that person assaults a tribal law enforcement officer by willfully or recklessly causing bodily harm or injury to any tribal law enforcement officer, or tribal police canine, or other law enforcement officer while such officer is engaged in or account of the performance of official duties.

3-10-12 Killing or Injury of Law Enforcement Support Animal

A person is guilty of a Felony offense if that person willfully and unjustifiably kills, shoots, tortures, torments, beats, kicks, strikes, mutilates, disables, or otherwise injures a law enforcement support animal.

3-10-12.1 A person is guilty of a Class 1 Misdemeanor if that person willfully:

a Harasses, taunts, or provokes a law enforcement support animal;

b Interferes with a law enforcement support animal while the animal is working; or

c Interferes with the individual handling the law enforcement support animal.

3-10-12.2 For purposes of this section, “law enforcement support animal” means any animal used by or on behalf of a law enforcement officer in the performance of the officer’s functions and duties, including crowd control, corrections, investigations, or search and rescue, regardless of whether the animal is on or off duty.

3-10-12.3 This section does not apply to a law enforcement officer or veterinarian who terminates the life of a law enforcement support animal to relieve the animal of undue suffering and pain.

3-10-13 Assault on a Tribal Government Employee

3-10-13.1 A person who assaults by willfully or recklessly causing bodily harm to any employee of the Three Affiliated Tribes or any of its sub-divisions while such employee is engaged in or on account of the performance of official duties is guilty of a Class 1 Misdemeanor.

3-10-13.2 A person who assaults by willfully or recklessly causing bodily harm or threatens to inflict bodily harm to any Tribal Business Council member or former Tribal Business Council member in or on account of the performance of official duties is guilty of a Felony offense.

3-10-13.3 A person who shall willfully use, attempt to use, or threaten to use physical force against Tribal justice personnel, as defined at subsection 3-16-3.1, shall be guilty of a Felony offense.

(As amended at Section 220.4 and 220.5 by Resolution 08-103-MP on July 10, 2008).

3-10-14 Custody of Committed Person – A person is guilty of a Class 3 Misdemeanor if the actor knowingly or recklessly takes or entices any committed person away from lawful custody when he is not privileged to do so.

3-10-15 Criminal Coercion

3-10-15.1 A person is guilty of a Class 3 Misdemeanor if with purpose to unlawfully restrict another's freedom of action to engage or refrain from engaging in conduct, the actor threatens to:

a Commit any criminal offense;
b Accuse anyone of criminal offense;
c Expose any secret tending to subject any person to hatred, contempt, or ridicule or to impair his credit or business repute; or
d Take or withhold action as an official or cause an official to take or withhold action.

It is an affirmative defense to a prosecution based on subsection 3-10-15.1(b)-(d), that the actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure or proposed official action, as by desisting from further misbehavior, making good a wrong done, or refraining from taking any action or responsibility for which the actor believes the other disqualified.

3-10-16 Reckless Endangerment

3-10-16.1 A person is guilty of a Class 1 Misdemeanor if he recklessly creates a substantial risk of serious bodily injury or death to another human being. The offense is a Felony if the circumstances manifest his extreme indifference to the value of human life.

3-10-16.2 There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized.

3-10-17 Terrorizing

3-10-17.1 A person is guilty of a Class 1 Misdemeanor if, with intent to place another human being in fear for that human being's or another's safety, or to cause the evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious disruption or public inconvenience, or in reckless disregard of the risk of causing such terror, disruption, or inconvenience, the person:

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

3-10-18 Menacing

3-10-18.1 A person is guilty of a Class 1 Misdemeanor if he intentionally places or attempts to place another human being in reasonable fear of physical injury, serious bodily injury, or death by:

a Displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun, or other firearm in a threatening manner; or

b Verbally threatens harm to another human or engages in a course of conduct or repeatedly commits acts over a period of time with the intent to cause him reasonable fear of physical injury, serious bodily injury, or death.

3-11 Sex Offenses

3-11-1 Definitions

The definitions apply throughout this chapter unless a different meaning is plainly required.

a "Broadcast" means to electronically transmit a visual image with the intent that it be viewed by a person or persons.

b "Capture" means, with respect to an image, to videotape, photograph, film, or record by any means, or to broadcast.

c "Child, children, minor, and juvenile" means a person under the age of eighteen (18) years.

d "Child pornography" means any visual depiction, including any photograph, film, video, picture or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(i) The production of such visual depiction involves the use of a child engaging in sexually explicit conduct;

(ii) Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a child engaging in sexually explicit conduct; or

(iii) Such visual depiction has been created, adapted, or modified to appear that an identifiable child is engaging in sexually explicit conduct.

e "Cohabit" means to live together under the representation or appearance of being married.

f "Coercion" means:

(i) Threats of serious harm to or physical restraint against any person;

(ii) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(iii) The abuse or threatened abuse of law or the legal process.

g "Commercial sex act" means any sex act for which anything of value is given to or received by any person.

h "Deviant sexual act" means any form of sexual contact with an animal, bird, or dead person.

i "Disseminate" means to sell, lease, rent, advertise, broadcast, transmit, exhibit, or distribute for pecuniary gain.

j "Female breast" means any portion of the naked female breast below the top of the areola.

k "House of Prostitution" means any place where prostitution or promotion of prostitution is regularly conducted by one person under the control, management, or supervision of another.

l "Husband and Wife or spouse" means couples who reside together and persons living together in a spouse-like relationship, regardless of the legal status of their relationship.

m "Inmate" is a person who engages in prostitution in or through the agency of a house of prostitution.

n "Lewd" means behaviors that are sexual in nature, performed with the intention of sexually arousing either the perpetrator or the person to whom the conduct is directed.

o "Material" means any physical object, including, but not limited to, any type of book, sound recording, film, or picture used as a means of presenting or communicating information, knowledge, sensation, image, or emotion to or through a human being's receptive senses.

p "Material that is harmful to children" means any communication, consisting of nudity, sexually explicit conduct, or excretion that, taken as a whole and with reference to its context:

(i) Predominately appeals to a prurient interest of children;

(ii) Is patently offensive to prevailing standards in the community with respect to what is suitable material for children; and

(iii) Lacks serious literary, artistic, political, or scientific value for children.

q "Object" means anything used in commission of a sexual act other than the person of the actor. This definition is restricted for use only in defining conduct of sexual offenses.

r "Obscene material and obscene performance" mean material or a performance which:

(i) Taken as a whole, the average person, applying contemporary Mandan, Hidatsa, Arikara Nation and North Dakota standards, would find predominately appeals to a prurient interest;

(ii) Depicts or describes in a patently offensive manner sexual conduct, whether normal or perverted; and

(iii) Taken as a whole, the reasonable person would find it lacking in serious literary, artistic, political, or scientific value or purpose.

s "Private area" means the naked or undergarment clad genitals, pubic area, buttocks, or female breast of the individual.

t "Prurient interest" means a voyeuristic, lascivious, degrading, shameful, or morbid interest in nudity, sexual matters, or excretion that goes substantially beyond customary limits of candor in description or representation of those matters.

u "Reasonable expectation of privacy" means:

(i) Circumstances in which a reasonable person would believe that he could disrobe in privacy, without being concerned that an image of a private area of the individual was being captured; or

(ii) Circumstances in which a reasonable person would believe that a private area of the individual would not be visible to the public, regardless of whether that individual is in a public or private place.

v "Serious harm" means any harm, whether physical or non-physical, including psychological, financial, or reputational harm, which is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

w "Sexual activity" is inclusive of definitions listed in subsections 3-11-1(x) "sexual act", 3-11-1(y) "sexual contact", and 3-11-1(h) "deviant sexual act" of this section.

x "Sexual act" means sexual contact between human beings consisting of:

(i) Contact between the penis and vulva, or the penis and the anus, and for purposes of this chapter, contact involving the penis occurs upon penetration, however slight;

(ii) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(iii) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person; or

(iv) The intentional touching, not through clothing, of the genitalia of another person that has not attained the age of eighteen (18) years with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person.

(v) Emission is not required.

y "Sexual contact" means any intentional touching, whether or not through the clothing or covering, of the sexual, intimate or other body parts of a person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of a person, with intent to abuse humiliate, harass, degrade, or arouse or satisfy the sexual or aggressive desires of any person.

z "Sexually explicit conduct" means actual or simulated:

(i) Sexual activity;

(ii) Masturbation;

(iii) Sexual bestiality;

(iv) Sadistic or masochistic abuse; or

(v) Lascivious exhibition of the genitals, pubic or rectal area of any person, or bare female breasts.

aa "Simulated" means the explicit depiction of conduct that creates the appearance of such conduct.

bb "Venture" means any group of two (2) or more individuals associated in a common scheme or purpose, whether a legal entity or not.

cc "Visual depiction" means any developed and/or undeveloped film, photograph, slide and/or videotape, and any photocopy, drawing, printed or written material, digital media and any data stored on a computer, or computer device capable of conversion into a visual image. Artificial intelligence generated images are included in this definition.

3-11-2 Rape

3-11-2.1 A person who intentionally engages in a sexual act with another, or causes another to engage in a sexual act, is guilty of a Felony offense if:

a The actor compels the other person to submit by force or by any threat of serious bodily injury, death, or kidnapping against the victim or other persons;

b The victim is incapable of giving consent to the sexual act due to a physical or mental incapacity;

c The victim is incapable of giving consent because of any intoxicants, narcotic, or anesthetic agent;

d The victim is unconscious;

e The victim submits because the victim mistakenly believes the actor to be someone he is not; or

f The victim is in official custody or otherwise detained in a hospital, prison, or other similar institution and the actor has supervisory or disciplinary authority over the victim.

3-11-3 Assault with Intent to Commit Rape

3-11-3.1 A person who shall knowingly assault another person with intent to commit rape is guilty of a Class 1 Misdemeanor.

3-11-4 Statutory Rape

3-11-4.1 A person who knowingly engages in a sexual act with a person who is under the age of seventeen (17) years and who is at least four (4) years older than the victim, or any person who knowingly aids or permits any such violation is guilty of a Felony offense.

Mistake of fact as to the age of the victim is not a defense to the crime of statutory rape.

3-11-5 Sexual Abuse of a Ward

3-11-5.1 A person who knowingly engages in sexual activity with another individual, or attempts to do so, is guilty of a Felony offense when that individual is:

a In official detention; or

b Under the custodial, supervisory, or disciplinary supervision of the person so engaging.

3-11-6 Sexual Assault

3-11-6.1 A person who intentionally has sexual contact with another person without the consent of such other person is guilty of a Felony offense.

3-11-7 Sexual Assault of a Child

3-11-7.1 A person who intentionally has sexual contact with a person under eighteen (18) years of age, or who causes another person to do so is guilty of a Felony offense.

3-11-8 Indecent Exposure

3-11-8.1 A person is guilty of a Class 4 Misdemeanor if he does any lewd act which he knows is likely to be observed by another who would be affronted or alarmed, for the purpose of arousing or gratifying the sexual desire of himself, or to any person other than his spouse, he knowingly and purposefully exposes his penis, vulva, or anus under circumstances in which he knows his conduct is likely to cause alarm, annoyance, or insult to the sensibilities of a reasonable person.

3-11-8.2 It is a Class 1 Misdemeanor if a person purposely exposes his penis, vulva, or anus to a minor in any public or private place or by any electronic means.

3-11-9 Incest

3-11-9.1 A person is guilty of incest, a Class 2 Misdemeanor, if he knowingly marries, cohabits, or engages in sexual acts or contacts with another person whom he knows to be a relative in the whole or half blood. Sexual relationships with a person's mother, father, sister, brother, grandparent, aunt, uncle, or cousin of the first or second degree are prohibited. The relationships referred to herein include blood relationships without regard to legitimacy, and relationships of parents and child by adoption.

3-11-10 Loitering to Solicit Sexual Activity

3-11-10.1 A person is guilty of a Class 4 Misdemeanor if he knowingly loiters in or near any public place for the purpose of soliciting or being solicited to engage in sexual activity. For purposes of this section, sexual activity includes any other deviant sexual relations.

3-11-11 Prostitution

3-11-11.1 A person is guilty of prostitution, a Class 3 Misdemeanor, if he:

a Is an inmate of a house of prostitution or otherwise engages in sexual activity as a business;

b Loiters in or within view of any public place for the purpose of being hired to engage in sexual activity;

c Solicits another person with the intention of being hired to engage in sexual activity; or

d Agrees to engage in sexual activity with another person for money or other items of pecuniary value.

3-11-11.2 It shall be presumed that any individual under the age of eighteen (18) years who had engaged or is engaging in an offense under this section was or is doing so against his will unless the tribal prosecutor can overcome such presumption beyond a reasonable doubt.

3-11-12 Promoting Prostitution

3-11-12.1 A person who knowingly promotes prostitution of another is guilty of a Class 2 Misdemeanor. The following acts shall constitute promoting prostitution:

a Owning, controlling, managing, supervising, or otherwise keeping, alone or in association with others, a house of prostitution business;

b Procuring an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate;

c Encouraging, inducing, or otherwise purposely causing another to become or remain a prostitute;

d Soliciting a person to patronize a prostitute;

e Procuring a prostitute for a patron;

f Transporting a person into or within this Reservation with purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose; or

g Leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be used for prostitution, the promotion of prostitution, or failure to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means; or

h Soliciting, receiving, or agreeing to receive any benefit for doing or agreeing to do anything prohibited by this subsection.

3-11-13 Engaging in Prostitution

3-11-13.1 A person is guilty of a Cass 3 Misdemeanor if that person:

a Offers or agrees to provide money or other items of pecuniary value to another individual with the intention of engaging in sexual activity;

b Enters or remains in a house of prostitution with intent to engage in sexual activity; or

c Solicits another person to procure a prostitute or commit an act of prostitution and if the prostitute is under the age of eighteen (18) years, the offense level increases to a felony.

3-11-14 Video Voyeurism

3-11-14.1 A person is guilty of the Felony offense of video voyeurism if that person, with an intent to capture an image of a private area of an individual, without the individual's consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy. This section does not prohibit any lawful law enforcement, correctional, or intelligence activity.

3-11-15 Entering Reservation with a Child to Engage in Sexual Act

3-11-15.1 Any person who enters into the Fort Berthold jurisdictional boundaries with intent to engage in sexual activity with a child who has not attained the age of eighteen (18) years shall be guilty of a Felony offense. In a prosecution under this section, the prosecutor need not prove that the defendant knew that the child was under the age of eighteen (18) years.

3-11-16 Sexual Exploitation of Children

3-11-16.1 A person is guilty of the Felony offense of sexual exploitation of children if that person:

a Knowingly employs, uses, persuades, induces, entices, or coerces any child to engage in, or who has a child assist any other person to engage in or who transports any child into the Fort Berthold Indian Reservation with the intent that such child engages in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct;

b Any parent, legal guardian, or person having custody or control of a child who knowingly permits such child to engage in or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct;

c Any person knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering:

(i) To receive, exchange, buy, produce, display, distribute or reproduce any visual depiction, if the production of such visual depiction involves the use of a child engaging in sexually explicit conduct and such visual depiction is of such conduct; or

(ii) Participation in any act of sexually explicit conduct by or with any child for the purpose of producing a visual depiction of such conduct.

3-11-16.2 Any organization that violates, attempts to violate, or conspires to violate this section shall be fined in accordance with the maximum fine penalty for a felony offense.

3-11-16.3 There is no limitation on the time in which a charge may be filed, or prosecution may commence for any offense under this section involving a victim who is under eighteen (18) years of age at the time of the alleged offense.

3-11-16.4 The prosecutor shall file a criminal complaint against a "John/Jane Doe" where there is physical evidence (forensic interview/examination, DNA, fingerprints, false name given, etc.) that a child is a victim of a human trafficking crime but where the perpetrator is unknown.

3-11-17 Selling or Buying of Children

3-11-17.1 Any parent, legal guardian, or other person having custody or control of a child who sells or otherwise transfers custody or control of such child, or offers to sell or otherwise transfer custody of such child shall be guilty of a Felony offense if, either:

a With knowledge that, because of the sale or transfer, the child will be portrayed in a visual depiction engaging in or assisting another person to engage in, sexually explicit conduct;

b With intent to promote either:

(i) The engaging in of sexually explicit conduct by such child for the purpose of producing any visual depiction of such conduct; or

(ii) The rendering of assistance by the child to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

3-11-17.2 A person is guilty of a Felony offense if that person purchases or otherwise obtains custody or control of a child, or offers to purchase or otherwise obtain custody or control of a child, if either:

a With knowledge that, because of the sale or transfer, the child will be portrayed in a visual depiction engaging in or assisting another person to engage in, sexually explicit conduct;

b With intent to promote either:
(i) The engaging in of sexually explicit conduct by such child for the purpose of producing any visual depiction of such conduct; or
(ii) The rendering of assistance by the child to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

3-11-18 Materials Involving the Sexual Exploitation of Children

3-11-18.1 A person is guilty of a Felony offense if that person, knowingly:

a Transport or ships by any means including computer or mails, any depiction, if:
(i) The producing of such visual depiction involves the use of a child engaging in a sexually explicit conduct; and
(ii) Such visual depiction is of such conduct.

b Receives or distributes any visual depiction using any means, or knowingly reproduces any visual depiction for distribution using any means, if:
(i) The producing of such visual depiction involves the use of a child engaging in sexually explicit conduct; and
(ii) Such visual depiction is of such conduct.

c Sells or possesses with intent to sell any visual depiction, if:
(i) The producing of such visual depiction involves the use of a child engaging in sexually explicit conduct; and
(ii) Such visual depiction is of such conduct.

d Possesses or knowingly accesses with intent to view, one (1) or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction, if:
(i) The producing of such visual depiction involves the use of a child engaging in sexually explicit conduct; and
(ii) Such visual depiction is of such conduct.

3-11-19 Materials Constituting or Containing Child Pornography

3-11-19.1 A person is guilty of a Felony offense who, knowingly:

a Mails, or transports or ships by any means, including by computer, any child pornography; or receives or distributes:
(i) Any child pornography by any means, including by computer; or
(ii) Any material that contains child pornography by any means, including computer.

b Reproduces any child pornography for distribution by any means, including by computer;

c Advertises, promotes, presents, or solicits by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains:
(i) An obscene visual depiction of a child engaging in sexually explicit conduct, or
(ii) A visual depiction of an actual child engaging in sexually explicit conduct.

d Sells or possesses with intent to sell any child pornography;

e Possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer device or any other material that contains an image of child pornography;

f Distributes, offers, sends, or provides to a child any visual depiction, including any photograph, film, video, picture or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, where such visual depiction is, or appears to be, of a child engaging in sexually explicit conduct for purposes of inducing or persuading a child to participate in any such same or similar illegal activity; or

g Produces with intent to distribute, or distributes, by any means, including a computer, child pornography that is an adapted or modified depiction of an identifiable child.

3-11-19.2 On motion of the prosecuting attorney, in any prosecution under this section, except for good cause shown, the name, address, social security number or other non-physical identifying information, other than the age or approximate age of any child who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the prosecutor, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual child.

3-11-19.3 Any person wronged either physically, emotionally, or psychologically by reason of the prohibited conduct of subsections 3-11-20.1(a)-(g) may commence a civil action for the relief set forth in the below subsections 3-11-20.4(a)-(c).

3-11-19.4 In any action commenced in accordance with subsection 3-11-20.1, the court may award appropriate relief, including:

a Temporary, preliminary or permanent injunctive relief;
b Compensatory and punitive damages; and
c The costs of the civil action and reasonable fees for attorneys and expert witnesses.

3-11-20 Obscenity

3-11-20.1 A person is guilty of a Class 3 Misdemeanor if he knowingly or recklessly:

a Sells, delivers, or provides, or offers or agrees to sell, deliver, or provide, an obscene writing, picture, record, or other representation or embodiment of the obscene;
b Presents or directs an obscene play, dance, or performance, or participates in that portion thereof which makes it obscene;
c Publishes, exhibits, or otherwise makes available any obscene material;
d Possesses any obscene material for purposes of sale or other commercial dissemination; or
e Sells, advertises, or otherwise commercially disseminates material, whether or not obscene, by representing or suggesting that it is obscene.

3-11-20.2 A person who disseminates or possesses obscene material in the course of his or her business is presumed to do so knowingly or recklessly.

3-11-20.3 In any prosecution under this section, evidence shall be admissible to show:

a The character of the audiences for which the material was designed or to which it was directed;
b What the predominant appeal of the material would be for ordinary adults or any special audience to which it was directed, and what effect, if any, it would have on the conduct of such people;
c Artistic, literary, scientific, educational, or other merits of the material;
d The degree of public acceptance of the material in the Mandan, Hidatsa, Arikara Nation. Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; and
e The good repute of the author, creator, publisher, or other person from whom the material originated.

3-11-21 Misleading Domain Names on the Internet

3-11-21.1 A person shall be guilty of a Felony offense who knowingly uses a misleading domain name on the internet with the intent to deceive either:

a A person into viewing material constituting obscenity; or

b A child into viewing material that is harmful to children.

3-11-21.2 For purposes of this section, a domain name that includes a word or words to indicate the sexual content of a site, such as "sex" or "porn", is not misleading.

3-11-22 Misleading Words or Digital Images on the Internet

3-11-22.1 A person shall be guilty of a Felony offense who knowingly embeds words or digital images into a source code of a website with the intent to deceive, either:

a A person into viewing material constituting obscenity; or

b A child into viewing material that is harmful to children.

3-11-22.2 For purposes of this section, a domain name that includes a word or words to indicate the sexual content of a site, such as "sex" or "porn", is not misleading.

3-11-23 Use of Child's Name for Illicit Purpose

3-11-23.1 A person shall be guilty of a Felony offense who knowingly uses, or attempts to do so, the name, address, telephone number, social security number or electronic mail address of an individual, knowing that individual has not attained the age of eighteen (18) years, with the intent to entice, encourage, offer, or solicit another person to engage in any sexual activity for which any person can be charged with a criminal offense.

3-11-24 Open Lewdness

3-11-24.1 A person is guilty of a Class 4 Misdemeanor if he knowingly does any lewd act, sexual in nature, and the actor knows it will be observed by others which act would be considered indecent or shocking to a reasonable person.

3-11-25 Credibility or Conduct of Complaining Witness

3-11-25.1 In a prosecution for any sex offense under this Chapter 3-11, opinion evidence, reputation evidence, and evidence of specific instances of the complaining witness' sexual conduct or any other such prior acts evidence, is not admissible on behalf of the defendant to prove consent by the complaining witness where lack of consent is an element of the offense.

3-11-26 Affirmative Defenses

3-11-26.1 It shall be an affirmative defense to a charge of prostitution that the individual is or was a victim of sex or human trafficking or acted under duress or otherwise against his will.

3-11-26.2 It shall be an affirmative defense to a charge under section 3-11-15 that the defendant:

a Possessed less than three (3) materials containing any visual depiction proscribed by that paragraph; and

b Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof:

(i) Took reasonable steps to destroy each such visual depiction; or

(ii) Reported the matter to a law enforcement agency and afforded that agency access to each such depiction.

3-11-26.3 It shall be an affirmative defense to a prosecution under sections 3-11-17, 3-11-19, 3-11-20 of this chapter that:

a The alleged child pornography was produced using an actual person or persons engaged in sexually explicit conduct, and each such person was an adult at the time the material was produced; or
b The alleged child pornography was not produced using any actual child or children.

3-11-26.4 It shall be an affirmative defense to prosecution under section 3-11-21 of this chapter that dissemination was restricted to:
a Institutions or person having scientific, educational, governmental, or other similar justification for possessing obscene material; or
b Non-commercial dissemination to personal associates of the actor.

3-12 Offenses Against Property

3-12-1 Definitions

3-12-1.1 In this chapter, unless a different meaning plainly is required:
a "In the course of committing" means the act of offense occurs in an attempt to commit an offense or in flight after the attempt or commission of the offense.
b "Night" means the period between thirty minutes past sunset and thirty minutes before sunrise.
c "Occupied Structure" means any structure, boat, vehicle, or place adapted for overnight accommodations of persons or for carrying on business or other activity therein. Such structure is an occupied structure whether or not a person is actually present.

3-12-2 Arson and Related Offenses

3-12-2.1 A person is guilty of arson, a Felony offense, if he starts a fire or causes an explosion with the purpose of:
a Destroying a building or occupied structure of another; or
b Destroying or damaging any property, whether his own or the property of another, to collect insurance for such loss.

3-12-2.2 A person is guilty of arson, a Felony offense, if he purposely starts a fire or causes an explosion, whether on his own property or property of another, and thereby recklessly:
a Places another person in danger of death or bodily injury; or
b Places a building or occupied structure of another in danger of damage or destruction.

3-12-2.3 A person is guilty of a Class 1 Misdemeanor if he knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable steps to put out or control the fire, when he can do so without substantial risk to himself, or fails to give a prompt fire alarm, if:
a He knows he is under an official, contractual, or other legal duty to prevent or combat the fire; or
b The fire was started, albeit lawfully, by him with his assent, or on property in his custody or control.

3-12-3 Causing or Risking Catastrophe

3-12-3.1 A person is guilty of Felony offense if he purposely, knowingly, or recklessly causes a catastrophe by explosion, fire, flood, avalanche, collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance, or by any other means of causing potentially widespread injury or damage.

3-12-3.2 A person is guilty of a Class 3 Misdemeanor if he recklessly creates a risk of catastrophe in the employment of fire, explosives or other dangerous means as listed in subsection 3-12-3.1 above.

3-12-3.3 A person who knowingly or recklessly fails to take reasonable measures to prevent or mitigate a catastrophe commits a Class 3 Misdemeanor if:

a He knows that he is under an official, contractual, or other legal duty to take such measures; or

b He did or assented to the act causing or threatening the catastrophe.

3-12-4 Criminal Mischief

3-12-4.1 A person is guilty of criminal mischief, a Felony offense, if he:

a Damages tangible property of another purposely, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means;

b Purposely or recklessly tampers with tangible property of another as to endanger person or property;

c The actor causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public service;

d Purposely or recklessly causes another to suffer pecuniary loss by deception or threat; or

e The pecuniary loss is in excess of five thousand (5,000) dollars.

3-12-4.2 A person is guilty of criminal mischief, a Class 3 Misdemeanor, if he purposely causes a pecuniary loss of one hundred (100) dollars or greater, but not less than twenty-five (25) dollars.

3-12-5 Burglary and Other Criminal Intrusion

3-12-5.1 A person is guilty of burglary, a Felony offense, if the actor breaks and enters a building or other occupied structure, or separately secured or occupied portion thereof, with purpose to commit a crime therein and, either:

a Perpetrates the burglary in the dwelling of another at night; or

b Purposely, knowingly, or recklessly inflicts or attempts to inflict bodily injury on any person; or

c Is armed with explosives or a deadly weapon.

3-12-5.2 A person who breaks and enters into a building or other occupied structure, or separately secured or occupied portion thereof during the daylight hours, with purpose to commit a crime therein, is guilty of a Class 1 Misdemeanor.

3-12-5.3 A person may not be convicted both for burglary and for the offense which it was his purpose to commit after the burglarious entry or for attempt to commit that offense unless the additional offense is also a felony offense.

3-12-6 Criminal Trespass

3-12-6.1 A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in any building or occupied structured, or separately secured or occupied portion thereof. An offense under this subsection 3-12-6.1 is a Class 2 Misdemeanor if it is committed in a dwelling at night. Otherwise, it is a Class 3 Misdemeanor.

3-12-6.2 A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

a Act or communication to the actor; or

b Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

c Fencing or other enclosures manifestly designed to exclude intruders.

d An offense under this subsection 3-12-6.2 constitutes a Class 3 Misdemeanor if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person. Otherwise, it is a Class 4 Misdemeanor.

3-12-6.3 It is an affirmative defense to a prosecution under subsections 3-12-6.1 and 3-12-6.2 that:

a A building or occupied structure involved in the offense was abandoned; or

b The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or

c The actor reasonably believed the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain.

3-12-7 Robbery

3-12-7.1 A person is guilty of robbery, a Felony offense, if the actor knowingly takes money or goods in the possession of another, from his person or immediate presence by force or intimidation, and in the course of the robbery, the actor:

a Inflicts serious bodily injury upon another; or

b Threatens with or purposely puts him in fear of immediate serious bodily injury; or

c Is armed with a deadly weapon or explosive.

3-13 Theft and Related Offenses

3-13-1 Definitions

3-13-1.1 In this chapter, unless a different meaning plainly is required:

a "Dealer" means a person in the business of buying or selling goods including a pawnbroker.

b "Deprive: means:

(i) To withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or

(ii) With intent to restore only upon payment of reward or other compensation, or

(iii) To dispose of the property so as to make it unlikely that the owner will recover it.

c "Financial Institution" means a bank, insurance company, credit union, building and loan association, investment trust or other organization held out of the public as a place of deposit of funds or medium of savings or collective investment.

d "Government" means the United States, any federal Indian reservation, state, county, municipality, or other political unit, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association conducting the functions of government.

e "Moveable property" means property the location of which can be changed including things growing on, affixed to, or found in land, and documents although the rights represented thereby have no physical location. "Immovable property" is all other property.

f "Obtain" means:

(i) In relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the obtainer or another; or

(ii) In relation to labor or service, to secure performance thereof.

g "Property" means anything of value, including real estate, tangible and intangible personal property, contractual rights, choses-in-action, and other interests in or claims to wealth, admission, or transportation tickets, captured or domestic animals, food and drink, electric or other power.

h "Property of another" means property, in which a person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might

be precluded from civil recovery because that property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

i "Receiving" means acquiring possession, control or title or lending on the security of the property.

j "Service" means labor, professional services, transportation, telephone, or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, use of vehicle or other movable property.

3-13-2 General Provisions and Grading of Theft Offenses

3-13-2.1 Conduct denominated theft in this chapter constitutes a single offense. An accusation of theft may support evidence that it was knowingly committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the charging document, subject only to the power of the court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or surprise.

a Theft constitutes a Felony offense if the amount involved exceeds five thousand (5,000) dollars, is taken from the person by threat, in breach of a fiduciary obligation, or if the property stolen is a firearm, automobile, airplane, motorcycle, motorboat, or motor propelled vehicle, or in the case of theft by receiving stolen property, if the receiver is in the business of buying or selling stolen property.

b Theft not within the preceding subsection 3-13-2.1(a) constitutes a Class 3 Misdemeanor, if the property was not taken from the person by threat, or in breach of fiduciary obligation, and the amount involved was more than fifty (50) dollars but less than five thousand (5,000) dollars.

c The amount involved in a theft shall be deemed to be the highest value, by any reasonable standard, of the property or services which the actor stole or attempted to steal. Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

d If it is an affirmative defense to prosecution for theft that the actor reasonably believed:
(i) That he was unaware that the property or service was that of another;
(ii) That he acted under an honest claim of right to the property or service involved;
(iii) That he had a right to acquire or dispose of it as he did;
(iv) When he took property exposed for sale, he intended to purchase and pay for it promptly, or;
(v) That the owner, if present, would have consented.

e It is no defense that theft was from the actor's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.

3-13-3 Theft by Unlawful Taking or Disposition

3-13-3.1 A person is guilty of theft, a Class 3 Misdemeanor, if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive the rightful owner of the property.

3-13-3.2 A person is guilty of theft, a Class 3 Misdemeanor, if he transfers immovable property of another or any interest therein with intent to benefit the actor or another not entitled to the property.

3-13-4 Theft by Deception

3-13-4.1 A person is guilty of theft by deception, a Class 3 Misdemeanor, if he purposely obtains property of another by deception. A person deceives if he:

a Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

b Prevents another from acquiring information which would affect his judgment or a transaction;

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

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

3-13-4.2 The term "deceive" does not, however, include falsity as to matters having no pecuniary significance or puffing by statements unlikely to deceive ordinary person in the group addressed.

3-13-5 Theft by Extortion

3-13-5.1 A person is guilty of theft by extortion, a Class 3 Misdemeanor, if he purposely obtains property of another by threatening to:

a Inflicts bodily injury on anyone or commit any other criminal offense;

b Accuse anyone of a criminal offense;

c Expose any secret tending to subject anyone to hatred, contempt, ridicule, or impair his credit or business repute;

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

e Bring about or continue a strike, boycott, or other collective unofficial action, if the property is demanded or received for the benefit of the group in whose interest the actor purports to act;

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

g Inflict any other harm.

3-13-5.2 It is an affirmative defense to prosecution under this section that the property obtained by threat of accusation, exposure, lawsuit, or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstance to which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services.

3-13-6 Theft of Property Lost, Mislaid, or Delivered by Mistake

3-13-6.1 A person is guilty of theft, a Class 3 Misdemeanor who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient if, with purpose to deprive the owner thereof, he fails to take reasonable steps to restore the property to a person entitled to have it.

3-13-7 Receiving Stolen Property

3-13-7.1 A person is guilty of theft, a Class 3 Misdemeanor, if he purposely receives, retains, or disposes of moveable property of another knowing that it has been stolen, or believing that it has

probably been stolen, unless the property is received, retained, or disposed with purpose to restore it to the owner.

3-13-7.2 A person is guilty of theft, a Felony offense, in the case of theft by receiving stolen property if the receiver is in the business of buying or selling stolen property.

a The requisite knowledge or belief is presumed in the case of a dealer who:
(i) Is found in possession or control of property stolen from two or more persons on separate occasions; or
(ii) Has received stolen property in another transaction within the year preceding the transaction charged.

b Being a dealer in property of the sort received, acquired if for a consideration which he knows is far below its reasonable value. If the amount involved was fifty (50) dollars or less, then the offense in this instance constitutes a Class 4 misdemeanor.

3-13-8 Theft of Service

3-13-8.1 A person is guilty of theft, a Class 3 Misdemeanor, if he purposely obtains services which he knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service.

a Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay give rise to a presumption that the service was obtained by deception as to intention to pay.

b A person commits theft, a Class 3 Misdemeanor, if having control over the disposition of services of others, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

3-13-9 Theft by Failure to Make Required Disposition of Funds Received

3-13-9.1 A person who purposely obtains property upon agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft, a Class 3 Misdemeanor, if he deals with the property obtained as his own and fails to make the required payment or disposition. The foregoing applies not withstanding that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition.

3-13-9.2 An officer or employee of the government or of a financial institution is presumed:

a To know any legal obligation relevant to his criminal liability under this section; and

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

3-13-10 Unauthorized Use of Automobiles and Other Vehicles

3-13-10.1 A person is guilty of a Class 3 Misdemeanor if he operates another's automobile, airplane, motorcycle, motorboat, or other motor propelled vehicle without consent of owner. It is an affirmative defense to prosecution under this section that the actor reasonably believed that the owner would have consented to the operation had he known of it.

3-14 Forgery and Fraudulent Practices

3-14-1 Definitions

3-14-1.1 In this chapter, the definitions given apply unless a different meaning plainly is required.

a "Adulterated" means varying from the standard of composition or quality prescribed by or pursuant to any statute providing criminal penalties for such variance or set by established commercial usage.

b "Commodity" means any material of commerce or agricultural produce that can be bought or sold.

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

d "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for such variance or set by established commercial usage.

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

3-14-2 Forgery

3-14-2.1 A person guilty of forgery, a Class 2 Misdemeanor, if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

a Alters any writing of another without the authority of the writer;

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

c Utters any writing, which he knows to be forged, in a manner specified in subsections 3-14-2.1 (a) or (b).

3-14-3 Simulation of Objects of Antiquity, Rarity, Source, or Authorship

3-14-3.1 A person is guilty of a Class 2 Misdemeanor if, with purpose to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters, or utters any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess.

3-14-4 Fraudulent Destruction, Removal, or Concealment of Recordable Instruments

3-14-4.1 A person is guilty of a Class 2 Misdemeanor if, with purpose to deceive or injure anyone, he destroys, removes, or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording.

3-14-5 Tampering with Records

3-14-5.1 A person is guilty of a Class 3 Misdemeanor if, knowing that he has no privilege to do so, he falsifies, destroys, removes, or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing.

3-14-6 Bad Checks

3-14-6.1 A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, is guilty of a Class I Misdemeanor if the amount exceeds one hundred (100) dollars. For the purpose of this section as well as in any prosecution for theft committed by means of a bad check, an issuer is presumed to know that the check or order would not be paid, if:

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

b Payment was refused by the drawee for lack of funds, upon presentation within thirty (30) days after issue, and the issuer failed to make good within ten (10) days after receiving notice of that refusal.

3-14-6.2 A person who issues or passes a check or similar sight order for the payment of money, which amount is less than one hundred (100) dollars and exceeds twenty-five (25) dollars and knowing that it will not be honored by the drawee, is guilty of a Class 3 Misdemeanor.

3-14-6.3 A person who issues or passes a check or similar sight order for the payment of money, which amount is twenty-five (25) dollars or less and knowing that it will not be honored by the drawee, is guilty of a Class 4 Misdemeanor.

3-14-7 Credit Cards

3-14-7.1 A person is guilty of a Class 3 Misdemeanor if he knowingly uses a credit card for the purpose of obtaining property or services with knowledge that:

a The card is stolen or forged;
b The card has been revoked or cancelled; or
c For any other reason, his use of the card is unauthorized.

3-14-7.2 It is a Felony under this section if the value of the property or services secured or sought to be secured by means of the credit card exceeds five thousand (5,000) dollars.

3-14-8 Deceptive Business Practices

3-14-8.1 A person is guilty of a Class 3 Misdemeanor if in the course of business, he knowingly or recklessly:

a Uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity;
b Sells, offers, or exposes for sale, or delivers less than the represented quantity of any commodity or service;
c Takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure;
d Sells, offers, or exposes for sale adulterated or mislabeled commodities;
e Makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof for the purpose of promoting the purchase or sale of property or services;
f Makes a false or misleading written statement for the purpose of obtaining property or credit; or
g Makes false or misleading written statement for the purpose of promotion of the sale of securities, or omits information required by law to be disclosed in written documents relating to securities.

3-14-9 Rigging Public Exhibited Contest

3-14-9.1 A person is guilty of a Class 3 Misdemeanor if, with purpose to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages purporting to govern it, he knowingly:

a Confers, offers, or agrees to confer any benefit upon, or threatens any injury to a participant, official, or other person associated with the contest or exhibition; or
b Tampers with any person, animal, or thing to be used by the contestants or exhibition participants.

3-14-9.2 A person is guilty of a Class 3 Misdemeanor if he knowingly solicits, accepts, or agrees to accept any benefit the giving of which would be criminal under subsection 3-14-9.1(a).

3-14-9.3 A person is guilty of a Class 3 Misdemeanor if he knowingly engages in, sponsors, produces, judges, or otherwise participates in a publicly exhibited contest knowing that the contest is not being conducted in compliance with the rules and usages purporting to govern it, by reason of conduct which would be criminal under this section.

3-14-10 Defrauding Secured Creditors

3-14-10.1 A person is guilty of a Class 2 Misdemeanor if he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with purpose to hinder enforcement of that interest.

3-14-11 Fraud in Insolvency

3-14-11.1 A person is guilty of a Class 2 Misdemeanor if, knowing that proceedings have been or are about to be instituted for the appointment of a receiver of other person entitled to administer property for the benefit of creditors, or that any other composition of liquidation for the benefit of creditors has been or is about to be made, he knowingly:

a Destroys, removes, conceals, encumbers, transfers, or otherwise deals with any property with purpose to defeat or obstruct the claim of any creditor, or otherwise to obstruct the operation of any law relating to administration of property for the benefit of creditors;

b Falsifies any writing or record relating to the property; or

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

3-14-12 Receiving Deposits in a Failing Financial Institution

3-14-12.1 An officer, manager or other person directing or participating in the direction of a financial institution is guilty of a Class 2 Misdemeanor if he receives or permits the receipt of a deposit, premium payment, or other investment in the institution knowing that:

a Due to financial difficulties the institution is about to suspend operations or go into receivership or reorganization; and

b The person making the deposit or other payment is unaware of the precarious situation of the institution.

3-14-13 Misapplication of Entrusted Property of Government or Financial Institution

3-14-13.1 A person is guilty of a Class 3 Misdemeanor if he applies or disposes of property that has been entrusted to him as a fiduciary, or property of the government or of a financial institution, in a manner which he knows is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted.

3-14-14 Securing Execution of Documents by Deception

3-14-14.1 A person is guilty of a Class 3 Misdemeanor if he knowingly uses deception and causes another to execute any instrument affecting, purporting to affect, or likely to affect, the pecuniary interest of any person.

3-15 Offenses Against the Family

3-15-1 Bigamy

3-15-1.1 A married person is guilty of bigamy, a Class 3 Misdemeanor, if he contracts or purports to contract another marriage, unless at the time of the subsequent marriage:

a The actor believes that the prior spouse is dead;

b The actor and the prior spouse have been living apart for five (5) consecutive years throughout which the actor did not know the prior spouse to be alive;

c A court has entered a judgment purporting to terminate or annul any prior disqualifying marriage, and the actor does not know that judgment to be invalid; or

d The actor reasonably believes that he is eligible to remarry.

3-15-2 Polygamy

3-15-2.1 A person is guilty of polygamy, a Class 3 Misdemeanor, if he marries or cohabits with more than one spouse in purported exercise of the right of plural marriage. The offense is a continuing one until all cohabitation and claim of marriage with more than one spouse terminates.

3-15-3 Interference with Custody of Children

3-15-3.1 A person is guilty of a Class 3 Misdemeanor if he knowingly or recklessly takes or entices any child under the age of eighteen (18) years from the custody of the child's parents, guardian, or other lawful custodian, when he has no privilege to do so. Proof that the child was below the critical age gives rise to a presumption that the actor knew the child's age or acted in reckless disregard thereof.

3-15-3.2 It is an affirmative defense that the actor believed that his action was necessary to preserve the child from danger to the child's welfare.

3-15-4 Child Abuse

3-15-4.1 A person is guilty of child abuse, a Felony offense, if the actor intentionally:

a Inflicts or allows to be inflicted upon the child unjustifiable physical pain by striking, beating, or torturing or causing mental suffering;

b Inflicts or allows to be inflicted upon the child substantial bodily injury or serious bodily injury; or

c Deserts the child with intent to abandon the child.

3-15-4.2 Upon conviction, in addition to the standard penalties, said person may be required to undergo medical evaluation and treatment if ordered by the court.

3-15-5 Child Neglect

3-15-5.1 A person having permanent or temporary care, custody, or responsibility for supervision of a child, is guilty of a Class 1 Misdemeanor, if the actor negligently.

a Deprives the child of necessary subsistence, education, shelter, medical treatment, or any other care necessary for the child's health and well-being while having the capability of so providing, except in cases where the parent's spiritual beliefs prohibit them from allowing medical treatment;

b Permits the child to live in an environment that causes the child's physical, mental, or emotional health to be significantly impaired or in danger of being significantly impaired;

c Fails to provide adequate parental care or control as evidenced by habitual delinquency;

d Leaves a child under the age of fourteen (14) years without competent supervision overnight for any reason other than an emergency;

e Exposes a child to a physically dangerous situation as a result of parental negligence;
f Fails to adequately clothe a child for severe weather conditions;
g Leaves a child under the age of ten (10) unsupervised in a motor vehicle with the ignition engaged for a continuous time more than fifteen (15) minutes;
h Knowingly allows a child under the age of eighteen (18) years access to alcoholic beverages, drugs, or tobacco;
i Knowingly allows a child to be out in public unsupervised after curfew; or
j Knowingly fails to immunize a child from a reasonably preventable disease when contacted by medical personnel or school officials, except in cases where the actor's spiritual beliefs prohibit them from allowing medical treatment.

3-15-5.2 A violation of subsections 3-15-5.1(a-j) shall be sentenced on a graduated scale as follows:
a 1st Offense – Class 4 Misdemeanor
b 2nd Offense – Class 3 Misdemeanor
c 3rd Offense – Class 2 Misdemeanor

3-15-5.3 In determining the offense level, the court shall review the person's court record, in this jurisdiction and all other tribal, state, or federal records for the past four (4) years. If deemed appropriate, the court may order guidance and counseling, rehabilitative services, or other remedial remedies such as temporary removal of the child from parental custody where repeated or severe neglect presents a danger to the child.

3-15-6 Removal of Child from Reservation in Violation of Custody Order

3-15-6.1 Any person who intentionally removes, causes the removal of, or detains the person's own child under the age of eighteen (18) years outside the Fort Berthold Indian Reservation with the intent to deny another person's rights in violation of an existing Three Affiliated Tribes Court custody order is guilty of a Felony offense. Detaining the child outside the Reservation in violation of the custody order for more than seventy-two (72) hours is prima facie evidence that the person charged with the offense intended to violate the custody order at the time of removal.

3-15-7 Failure to Send a Child to School

3-15-7.1 Any person with custodial care and control over a child who knowingly, without good cause as defined in subsection 3-15-7.2, neglects or refuses to send any child under the age of eighteen (18) years to school is guilty of a Class 4 Misdemeanor.

3-15-7.2 For purposes of this section, good cause shall include, but not be limited to the following:
a Illness in the child's immediate family, making the child's presence at home an actual necessity, or his presence in school a threat to the health of other pupils;
b The physical or mental condition of the child is such as to render his attendance at school unsafe, impracticable, or harmful to such child or to others. The nature of such condition must be evidenced by the certificate of a reputable physician, dentist, psychologist, or other health professional lawfully in the business to treat such sickness or disease;
c The child, as declared by a licensed physician, is mentally or physically handicapped, and cannot receive proper instruction in the common schools, in which case suitable provisions will be made for the educational instruction or training of such child, if possible. In the event that a child with intellectual disabilities cannot be provided with educational instruction, it shall be the duty of the Tribal judge to make a written report of said condition and submit the report of such finding to the Tribal Department of Child Welfare; and

d The child's educational instruction in the subjects commonly taught in the schools is otherwise provided by a competent person or parent. All such instructions and reports covering the child's school subjects shall be filed with the relevant school administration.

3-15-8 Persistent Failure to Support

3-15-8.1 A person is guilty of a Class 3 Misdemeanor if he willfully, knowingly, and persistently fails to provide support of which he is capable to provide and which he is legally obligated by court order to provide for the care of his dependent children, regardless if the child(ren) are born out of wedlock.

3-15-9 Family Violence

3-15-9.1 A person is guilty of a Class 1 Misdemeanor if he:

a Willfully causes bodily harm or injury to a family or household member;

b Willfully threatens, uses, or attempts to use physical force, or threatens the use of a deadly weapon against a family or household member; or

c Negligently causes bodily harm or injury to a family or household member by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.

d The definitions of bodily injury, deadly weapon, and serious bodily injury as defined in subsection 3-10-1.1 shall apply to this section.

3-15-9.2 For purposes of this section, "family or household member" shall include:

a Parents, siblings, child, or person who stands in the place of a parent (in loco parentis); and

b Any other person living in the residence and who is related to the victim by blood or marriage;

c Family member shall not include a "spouse or intimate partner" as the term is defined in Chapter 24, subsection 3-24-3.1(t) of this title, as violence against such individuals is governed by the provisions of Chapter 24 of this title.

3-15-9.3 A victim of family violence shall be entitled to seek the issuance of a protection order, pursuant to the provisions provided at chapter 24, section 3-24-14 of this title.

3-15-9.4 As used in this section, dangerous weapon means any firearm, or device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is capable of producing death or serious bodily injury.

3-15-10 Endangering Welfare of Children

A parent, guardian, or other person supervising the welfare of a child under eighteen (18) years of age commits a Class 2 Misdemeanor if he knowingly endangers the child's welfare by violating a duty of care, protection, or support.

3-16 Offense Against Public Administration

3-16-1 Definitions

3-16-1.1 In this chapter, unless a different meaning plainly is required:

a "Administrative Proceeding" means any proceeding other than a judicial proceeding the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals.

b "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare he is

interested, but not an advantage promised to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

c "Government" means the tribal government of the Fort Berthold Indian Reservation or any political subdivision of the tribal government; any agency, subdivision, or department of the tribal government or any political subdivision of the tribal government including the executive, legislative, and judicial branches; any corporation or other entity established by law to carry on any governmental function; and any commission, corporation, or agency established by statute, compact, or contract between or among other State, Tribal, or Federal governments for the execution of intergovernmental programs.

d "Governmental Function" includes any activity that one or more public servants are legally authorized to undertake on behalf of the government.

e "Harm" means loss, disadvantage or injury to person affected, including loss, disadvantage or injury to any other person or entity in whose welfare he is interested.

f "Official Proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding.

g "Pecuniary benefit" means benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

h "Public Servant" means elected tribal government officials, tribal appointed department officials, tribal appointed judicial and legal staff, all law enforcement officials, all support staff to such officials, all tribal elected and or appointed board/committee member, and all other employees of the Three Affiliated Tribes who serve in any employment capacity.

3-16-2 Bribery in Official and Political Matters

3-16-2.1 A person is guilty of bribery, a Class 3 Misdemeanor, if he offers, confers, or agrees to confer upon another, or solicits, accepts, or agrees to accept from another:

a Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant or voter;

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

c Any benefit as consideration for a violation of a known legal duty as public servant or party official.

3-16-2.2 It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

3-16-3 Threats and Other Improper Influence in Official and Political Matters

3-16-3.1 A person is guilty of a Class 2 Misdemeanor if he knowingly and purposely:

a Threatens unlawful harm to any person with the purpose to influence his decision, opinion, recommendation, vote, or other exercise of discretion of a public servant, Tribal Business Council official, or voter;

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

c Threatens harm to any public servant with purpose to influence him to violate his~~/her~~ known legal duty; or

d Privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, petition, argument, or other communication with purpose to influence the outcome on the basis of considerations other than those authorized by law.

3-16-3.2 It is not a defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction, or for any other unlawful reason.

3-16-4 Compensation for Past Official Behavior

3-16-4.1 A person is guilty of a Class 3 Misdemeanor if he solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as public servant, given a decision, opinion, recommendation or vote favorable to another, or having otherwise exercised a discretion in his favor, or for having violated his duty.

3-16-4.2 A person is guilty of a Class 3 Misdemeanor if he offers, confers, or agrees to confer compensation acceptance of which is prohibited by this section.

3-16-5 Retaliation for Past Official Action

3-16-5.1 A person is guilty of a Class 2 Misdemeanor if he knowingly harms another by any unlawful act in retaliation for anything lawfully done by the latter former official in the capacity of a public servant.

3-16-6 Bribery to Public Servants

3-16-6.1 A person who knowingly or intentionally commits any of the following shall be guilty of a Class 2 Misdemeanor:

a Regulatory and Law Enforcement Officials - No public servant in any tribal department or agency exercising a regulatory function, or conducting inspection or investigation, or carrying on civil or criminal litigation on behalf of the government, or having custody of a prisoner, shall solicit, accept or agree to accept, any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated.

b Officials Concerned with Government Contracts and Pecuniary Transactions - No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the tribal government shall solicit, accept, or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or other pecuniary transaction of the tribal government.

c Judicial and Administrative Officials - No public servant having judicial or administrative authority, or participating in the enforcement of its decisions, shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or tribunal with which he is associated.

d Legislative Officials - No public servant shall solicit, accept, or agree to accept any pecuniary benefit from any person known to be interested in a bill, transaction or proceeding, pending, or contemplated, before the tribal government or any committee or agency thereof.

3-16-6.2 A person who knowingly confers, or offers or agrees to confer, benefit upon any public servant in the foregoing subsections 3-16-6.l(a)-(d) shall be guilty of a Class 1 Misdemeanor and shall be forever barred from conducting any future tribal business transactions.

3-16-6.3 This section 3-16-6 shall not apply to the following transactions:

a Fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise legally entitled;

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

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

3-16-7 Interference with Elections

3-16-7.1 A person who knowingly or willfully commits any of the following actions shall be guilty of a Class 1 Misdemeanor offense:

a Coerces, threatens, injures, or intimidates another person with respect to voting, qualifying to vote, qualifying as a candidate for elective office, or qualifying or working as an election official, in any primary, special, or general election of the Three Affiliated Tribes;

b In connection with any election of the Three Affiliated Tribes, makes or induces any fraudulent voter activity; or

c In connection with any election of the Three Affiliated Tribes, offers, gives, or agrees to give anything of pecuniary value to another person as consideration for the recipient's voting or withholding his vote for or against any candidate or issue or acts on behalf of another for such conduct.

3-16-8 Official Oppression

3-16-8.1 A person acting or purporting to act in an official capacity or taking advantage of such actual or purporting capacity is guilty of a Class 3 Misdemeanor if, knowing that his conduct is illegal, he:

a Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of person property rights; or

b Denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity.

3-16-9 Speculating or Wagering on Official Action or Information

3-16-9.1 A public servant is guilty of a Class 3 Misdemeanor if, in contemplation of official action by himself or by a governmental unit with which he is associated, or in reliance on information to which he has access in his official capacity and which has not been made public, he knowingly:

a Acquires a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action; or

b Speculates or wagers on the basis of such information or official action; or

c Aids another to do any of the foregoing.

3-17 Perjury and Other Falsification in Official Matters

3-17-1 Definitions

3-17-1.1 In this chapter, the definitions given in subsection 3-16-1.1 apply unless a different meaning plainly is required:

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

3-17-2 Perjury

3-17-2.1 A person is guilty of perjury, a Class 2 Misdemeanor, if in any official proceeding he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made, when the statement is material, and the declarant does not believe it to be true. Falsification is material, regardless of the admissibility of the statement under the rules of evidence, if it could have affected the course or outcome of the proceeding. It is not a defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

3-17-2.2 It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner. A document purporting to be made upon oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

3-17-2.3 No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became evident that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

3-17-2.4 Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such a case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant.

3-17-3 False Swearing

3-17-3.1 A person who knowingly makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such statement previously made, when he does not believe the statement to be true, is guilty of a Class 3 Misdemeanor if:

a The falsification occurs in an official proceeding; or

b The falsification is intended to mislead a public servant in performing his official functions.

3-17-3.2 A person who knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a Class 4 Misdemeanor, if the statement is one which is, required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

3-17-4 Unsworn Falsification to Authorities

3-17-4.1 A person is guilty of a Class 4 Misdemeanor if, with purpose to mislead a public servant in performing his official function, the actor:

a Makes any written false statement which he does not believe to be true;

b Purposely creates a false impression in a written application for any pecuniary or other benefit, by omitting information necessary to prevent the statement from being misleading;

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

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

3-17-4.2 A person is guilty of a Class 3 Misdemeanor if he makes a written false statement which he does not believe to be true, on or pursuant to a form bearing notice authorized by law, to the effect that false statements made therein are punishable.

3-17-5 False Alarms to Agencies of Public Safety

3-17-5.1 A person who knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property is guilty of a Class 2 Misdemeanor.

3-17-6 False Reports to Law Enforcement Authorities

3-17-6.1 A person who knowingly gives false information to any law enforcement officer with purpose to falsely implicate another is guilty of a Class 3 Misdemeanor.

3-17-6.2 A person is guilty of a Class 4 Misdemeanor if he purposely or knowingly:

a Reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

b Pretends to furnish such authorities with information relating to an offense or incident when he knows he does not have information relating to such offense or incident.

3-17-7 Tampering with Witnesses and Informants

3-17-7.1 A person is guilty of a Class 3 Misdemeanor if, believing that an official proceeding or investigation is pending or about to be instituted, he knowingly attempts to induce or otherwise cause a witness or informant to:

a Testify or inform falsely;

b Withhold any testimony, information, document, or thing;

c Elude legal process summoning him to testify or supply evidence; or

d Absent himself from any proceeding or investigation to which he has been legally summoned.

3-17-7.2 A person is guilty of a Class 1 Misdemeanor if he intentionally harms another by any unlawful act in retaliation for anything lawfully done by the victim in the capacity of witness or informant.

3-17-7.3 A person is guilty of a Class 2 Misdemeanor if he knowingly solicits, accepts, or agrees to accept any benefit in consideration of his doing any of the acts specified in subsections 3-17-7.1(a)-(d).

3-17-8 Tampering with Jurors or Court Officers

3-17-8.1 A person is guilty of a Class 2 Misdemeanor if, believing that an official proceeding is pending or about to be instituted, he purposely attempts to corruptly influence, intimidate, or impede a juror or court officer by verbal threats, force, or by any threatening letter or communications with intent to interfere with the judicial process.

3-17-8.2 A person is guilty of a Felony offense if he knowingly harms a juror or court officer by any unlawful act in retaliation for any act lawfully done in the capacity as a juror or court officer.

3-17-9 Tampering with or Fabricating Physical Evidence

3-17-9.1 A person is guilty of a Class 2 Misdemeanor if, believing that an official proceeding or investigation is pending or about to be instituted, he purposely:

a Alters, destroys, conceals, or removes any record, document, or thing with purpose to impair its truth or availability in such proceeding or investigation; or

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

3-17-10 Tampering with Public Records or Information

3-17-10.1 A person is guilty of a Class 2 Misdemeanor, if he knowingly:

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

b Makes, presents, or uses any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of the information or record referred to in subsection 3-17-10.1(a); or

c Purposely and unlawfully destroys, conceals, removes, or otherwise impairs the veracity or availability of any such record, document, or thing.

3-17-11 Impersonating a Public Servant

3-17-11.1 A person is guilty of a Class 3 Misdemeanor if he knowingly pretends to hold a position in the tribal public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to the other person's detriment or harm.

3-18 Obstructing Governmental Operations

3-18-1 Definitions

3-18-1.1 In this chapter, unless another meaning plainly is required, the definitions given in sections 3-16-1 and 3-17-1 shall apply.

a "Official detention" means arrest, detention in any facility for custody of a person held under a charge or conviction of crime or alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes; but "official detention" does not include supervision of probation or parole, or constraint incidental to release on bail.

b "Unlawfully" means surreptitiously or contrary to law, regulation, or order of the detaining authority.

3-18-2 Obstructing Administration of Law – Contempt of Court

3-18-2.1 A person is guilty of a Class 2 Misdemeanor if he purposely:

a Obstructs, impairs, or perverts the judicial function by force, violence, physical interference or obstacle, or any other unlawful act;

b Misbehaves in the presence of the court or so near thereto as to obstruct the administration of justice; or

c Disobeys or resists any process, order, subpoena, warrant or command of the court.

3-18-3 Resisting Arrest

3-18-3.1 A person is guilty of a Class 1 Misdemeanor if, for the purpose of preventing a law enforcement officer from effecting a lawful arrest or discharging any other duty, the actor creates a substantial risk of bodily injury to the public servants or anyone else or employs means justifying or requiring substantial force to overcome the resistance.

3-18-4 Hindering Apprehension or Prosecution

3-18-4.1 A person is guilty of a Class 2 Misdemeanor, if with purpose to hinder the apprehension, prosecution, conviction, or punishment of another person for a criminal act, the actor knowingly:

a Harbors or conceals the other person;

b Provides or aids in providing a weapon, transportation, disguise, or other means of avoiding apprehension or effecting escape;
c Conceals or destroys evidence of the crime, or tampers with a witness, informant, document, or other source of information, regardless of its admissibility;
d Warns the other person of impending discovery or apprehension, except that this paragraph does not apply to a warning given in connection with an effort to bring another into compliance with law; or
e Volunteers' false information to a law enforcement officer.

3-18-4.2 A person is guilty of a Felony offense if the actor knows the other person so aided has been charged with a felony or is about to be charged.

3-18-5 Aiding Consummation of Crime

3-18-5.1 A person is guilty of a Class 3 Misdemeanor if he purposely aids another to accomplish an unlawful object of a crime, as by safeguarding the proceeds thereof or converting the proceeds into negotiable funds.

3-18-5.2 A person is guilty of a Class 1 Misdemeanor if the actor aids another in the manner proscribed in subsection 3-18-5.1 and the object of the crime is a Felony offense.

3-18-6 Failure to Report a Crime or Death

3-18-6.1 A person who discovers a dead body or acquires the first knowledge of the death of a person and shall purposely fail to immediately notify and report the death to Three Affiliated Tribes Law Enforcement or emergency medical authorities is guilty of a Class 1 Misdemeanor.

3-18-6.2 Any person who knowingly accepts or agrees to accept any pecuniary benefit in consideration of refraining from reporting to law enforcement authorities the commission or suspected commission of a felony level offense or information relating to the commission of a felony level offense shall be guilty of a Class 1 Misdemeanor

3-18-7 Escape

3-18-7.1 A person is guilty of a Class 2 Misdemeanor if he unlawfully removes himself from official detention or fails to return to official detention following a temporary leave granted for a specific purpose or limited period.

3-18-7.2 A public servant of the detention facility is guilty of a Class 2 Misdemeanor if he knowingly or willingly permits an escape.

3-18-7.3 Any person who knowingly causes or facilitates an escape is guilty of a Class 2 Misdemeanor.

3-18-8 Implements for Escape, Other Contraband

3-18-8.1 A person is guilty of a Class 2 Misdemeanor if he knowingly introduces within a detention facility, or knowingly provides an inmate with, any weapon, tool or other thing which may be useful for escape.

3-18-8.2 An inmate is guilty of a Class 3 Misdemeanor if he unlawfully procures, makes, or otherwise provides himself with, or has in his possession, any such implement of escape.

3-18-8.3 A person is guilty of a Class 3 Misdemeanor if he knowingly provides an inmate with anything which the actor knows is unlawful for the inmate to possess.

3-18-9 Bail Jumping; Default in Required Appearance

a A person released from custody by court order, with or without bail, upon condition that he will subsequently appear at a specified time and place, is guilty of a Class 3 Misdemeanor if, without lawful excuse, he fails to appear at that time and place so ordered by the court.

b A person is guilty of a Felony offense when the required appearance was to answer for a felony charged offense, or for disposition of any such charge, and the actor took flight or went into hiding to avoid apprehension, trial, or punishment.

3-18-10 Fleeing a Police Officer

Any person, other than a driver of a motor vehicle under section 3-26-9 of this code, who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing peace officer, when given a visual or audible signal to stop, is guilty of a Class 3 Misdemeanor for a first and second offense and a Class 1 Misdemeanor for any subsequent offenses. A signal to stop complies with this section if the signal is perceptible to the person and:

a If given from a vehicle, the signal is given by hand, voice, emergency light or siren, and the vehicle is appropriately marked showing it to be an official law enforcement vehicle; or

b If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform and prominently displays the officer's badge.

3-18-11 Obstruction of Justice

A person is guilty of a Class 1 Misdemeanor if he intentionally obstructs, impairs, impedes, hinders, prevents, or perverts the administration of law or other governmental functions.

3-19 Offenses Against Public Order and Decency

3-19-1 Definitions

3-19-1.1 In this chapter, unless another meaning is plainly required, the following definitions apply:

a "Desecrates" means defacing, damaging, polluting, or otherwise physically mistreating in a way that the actor knows will outrage the sensibilities of a person likely to observe or discover his action.

b "Loitering" means the act of standing or idling so as to hinder or impede the passage of pedestrians or vehicles or conduct which obstructs any person from exercising his right to freely come and go or which is detrimental to the safety or good order of the public.

c "Incite a riot" means to organize, promote, encourage, participate in, or carry on a riot, and includes, but is not limited to, urging or instigating other persons to riot, but shall not be deemed to mean the mere oral or written advocacy of ideas, or expression of belief, not involving advocacy of any act or acts of violence or assertion of the rightness of or the right to commit, any such act or acts.

d "Obstructs" means render impassable without unreasonable inconvenience or hazard.

e "Private Place" means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance but does not include a place to which the public or a substantial group thereof has access.

f "Public" means affecting or likely to affect a person in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

3-19-2 Riot

3-19-2.1 A person is guilty of riot, a Class 1 Misdemeanor offense, if he knowingly participates with two or more other persons to create a public disturbance involving:

a An act or acts of violence, which act, or acts shall constitute a clear and present danger of, or shall result in, damage or injury to the property of any person or to the person of any individual; or

b A threat or threats of the commission of an act or acts of violence with two or more persons having, individually or collectively, the ability of immediate execution of such threat or threats, where the performance of the threatened act or acts of violence would constitute a clear and present danger of, or would result in, damage or injury to the property of any other person or to the person of any other individual.

3-19-3 Failure to Disperse Upon Official Order

3-19-3.1 When two (2) or more persons are knowingly or intentionally participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, annoyance, or alarm to a law enforcement officer or other public servant engaged in executing or enforcing the law, the law enforcement or other public servant charged with maintaining order may order the participants and others in the immediate vicinity to disperse. A person who willfully refuses to obey is guilty of a Class 3 Misdemeanor.

3-19-4 Disorderly Conduct

3-19-4.1 A person is guilty of disorderly conduct, a Class 4 Misdemeanor, if, with purpose to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, the actor:

a Engages in fighting or threatening or in violent or tumultuous behavior; or

b Makes unreasonable noise or offensively coarse utterance, gesture, or display, or addresses abusive language to any person present; or

c Creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

3-19-5 Public False Alarms

3-19-5.1 A person is guilty of a Class 4 Misdemeanor if he intentionally initiates or circulates a report or warning of an impending bombing or other crime or catastrophe, knowing that the report or warning is false or that it is likely to cause evacuation of a building, place or assembly, or facility of public transport, or to cause public inconvenience or alarm.

3-19-6 Harassment

3-19-6.1 A person is guilty of a Class 3 Misdemeanor if, with purpose to frighten or harass another, he intentionally:

a Communicates a threat to inflict personal injury on a person, to any person's reputation, or to any property;

b Communicates a falsehood in writing or by other means of communication and causes mental anguish;

c Engages in any other course of alarming conduct serving no legitimate purpose of the actor;

d Insults, taunts, or challenges another in a manner likely to provoke a violent or disorderly response;

e Makes repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language;

f Makes repeated calls, whether or not a conversation ensues, with no purpose of legitimate communication; or

g Subjects another to an offensive touching.

3-19-6.2 Any offense defined in this section and committed by use of any communication device, postal service, or other method of deliver, may be deemed to have been committed at either the place of origin of the communication, or at the place where communication was received.

3-19-7 Public Intoxication due to Alcohol

3-19-7.1 No person under the jurisdiction of this Tribe shall be prosecuted in the Tribal court solely for public intoxication.

3-19-7.2 A law enforcement officer shall have authority to take any person, appearing in public in an intoxicated condition to his home, to a local hospital, or whenever such person constitutes a danger to himself or others, to a jail for purposes of detoxification.

a If taken to a hospital, a duly licensed physician of such hospital shall have authority to hold such person for treatment for up to seventy-two (72) hours.

b If taken to jail, such person shall not be held in jail because of intoxication for more than twenty-four (24) hours.

c An intoxicated person shall only be in a jail which has jailers constantly present within hearing distance and which can provide medical services when the need is indicated.

3-19-7.3 Upon placing a person in a hospital or jail, the said law enforcement officer shall notify the intoxicated person's family as soon as reasonably possible.

3-19-8 Loitering or Prowling

3-19-8.1 A person is guilty of a Class 4 Misdemeanor if he purposely loiters on any highway, street, or sidewalk or in any other public place in a manner not usual for law-abiding individuals under circumstances that warrants alarm for the safety of persons or property in the vicinity.

a Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon the appearance of a law enforcement officer, refuses to identify himself, or manifestly endeavors to conceal himself or any object.

b Unless flight by the actor or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct.

3-19-8.2 No person shall be convicted of an offense under this section if the law enforcement officer did not comply with the preceding subsection 3-19-8.1(b), or if it appears at trial that the explanation given by the actor was true and, if believed by the law enforcement officer at the time, would have dispelled the alarm.

3-19-9 Obstructing Highways and Other Public Passages

3-19-9.1 A person, who, having no legal privilege to do so, purposely or recklessly obstructs any highway or other public passage, whether alone or with others, is guilty of a Class 4 Misdemeanor or, in case the actor persists after warning by a law enforcement officer, it shall be a Class 3 Misdemeanor.

a No person shall be deemed guilty of recklessly obstructing in violation of this section because of a gathering of persons to hear the actor speak or otherwise communicate, or solely because of being a member of such a gathering.

b A person in such a gathering is guilty of a Class 4 Misdemeanor if he refuses to obey a reasonable official request or order to move:

(i) To prevent obstruction of a highway or other public passage; or

(ii) To maintain public safety by dispersing those gathered in dangerous proximity to a fire or other hazard.

c An order to move, addressed to a person whose speech or other lawful behavior attracts an obstructive audience, shall be deemed reasonable if the obstruction can be readily remedied by law enforcement to control the size or location of the gathering.

3-19-10 Disrupting Meetings and Processions

3-19-10.1 A person is guilty of a Class 4 Misdemeanor if, with purpose to prevent or disrupt a lawful meeting, procession or gathering, he does any act tending to obstruct or interfere with it physically, or makes any utterance, gesture, or display designed to outrage the sensibility of the group.

3-19-11 Desecration of Venerated Objects

3-19-11.1 A person is guilty of a Class 4 Misdemeanor if he purposely desecrates any public monument, structure, or place of worship or burial, or if he purposely desecrates the national or tribal flag or any other object of veneration by the public or a substantial segment thereof in any place.

3-19-12 Abuse of Corpse

3-19-12.1 Except as authorized by law, a person who purposely treats a corpse in a manner that he knows would outrage ordinary or cultural family sensibilities is guilty of a Class 2 Misdemeanor.

3-19-13 Movement or Transportation of a Corpse

3-19-13.1 Except as authorized by law, a person who purposely moves or transports a corpse from the place where the death occurred is guilty of a Class 1 Misdemeanor.

3-19-14 Cruelty to Animals

3-19-14.1 A person is guilty of a Class 3 Misdemeanor if he purposely or recklessly:

a Subjects any animal to cruel mistreatment;

b Subjects any animal in his custody to cruel neglect; or

c Kills or injures any animal belonging to another without legal privilege or consent of the owner.

3-19-14.2 Subsections 3-19-14.1(a)-(c) shall not be deemed applicable to accepted veterinary practice and activities executed for scientific research.

3-19-15 Violation of Privacy

3-19-15.1 A person is guilty of a Class 2 Misdemeanor if, except as authorized by law, the actor knowingly or purposely:

a Trespasses on property with purpose to subject anyone to eavesdropping or other surveillance in a private place; or

b Installs in any private place, without the consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in such place or uses any such unauthorized installation; or

c Installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in such place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there.

3-19-15.2 A person is guilty of a Class 2 Misdemeanor if, except as authorized by law, the actor, knowingly or purposely:

a Intercepts without the consent of the sender or receiver a message made by any communication device, letter, or other means of private communication; but this subsection shall not extend to:
   (i) Overhearing of message through a regularly installed instrument on a telephone or on a telephone extension; or
   (ii) Interception by the telephone company or communications subscriber incident to enforcement of regulations limiting the use of the facilities or incident to other normal operation and use.

b Divulges without the consent of the sender or receiver the existence or contents of any such message if the actor knows that the message was illegally intercepted, or if he learned of the message in the course of employment with an agency engaged in transmitting it.

3-19-16 Interference with Emergency Communication

3-19-16.1 A person is guilty of a Class 2 Misdemeanor if the actor intentionally prevents or interferes with another person's ability to place an emergency 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.

3-19-16.2 A person is guilty of a Class 3 Misdemeanor if the actor recklessly renders unusable a communication device that would otherwise be used by another person to place an emergency 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.

3-19-17 Criminal Street Gangs

3-19-17.1 Definitions

a "Criminal Street Gangs" means any group of three (3) or more persons which engage in or has as its purpose to engage in offenses which are proscribed within the TAT Tribal Code; and

b Evidence concerning indications of gang membership may include, but is not limited to, gang related paraphernalia, tattoos, clothing, or colors.

3-19-17.2 Participating in or Assisting a Criminal Street Gang

A person is guilty of a Class 1 Misdemeanor if the actor or actors participate in a criminal street gang by:

a Intentionally organizing, managing, directing, or supervising a Criminal Street Gang with the intent to promote or further a criminal objective; or

b Knowingly entice or induce others to engage in violence or intimidation to promote or further a criminal objective: or

c Furnish advice or direction in the conduct, financing, or management of a Criminal Street Gang's affairs with the intent to promote or further a criminal objective; or

d Hire, engage, or use a minor for any conduct preparatory to or in completion of any criminal objective of the Criminal Street Gang; or

e Commit any offense proscribed with the TAT Tribal Code with the intent to promote or further the criminal objective of the Criminal Street Gang.

3-19-18 Underage Possession or Consumption of Alcoholic Beverages

3-19-18.1 A person aged eighteen (18) years or older but under twenty-one (21) years of age is prohibited from possessing or consuming alcoholic beverages. A conviction of guilt for a first offense is punishable as a Class 4 Misdemeanor, a second and subsequent offenses of this section are punishable as Class 3 Misdemeanors.

3-19-18.2 In addition to imposing the respective penalty prescribed for a Class 3 or Class 4 Misdemeanor, the court may order an alcohol evaluation which shall be conducted and submitted to the court within a period not to exceed thirty (30) days. The court may order the defendant to comply with and fully satisfy any and all recommendations arising from the evaluation. Probation may be utilized as appropriate.

3-19-19 Underage Possession or Consumption of Tobacco and Vaping Devices

A person aged eighteen (18) years or older but under twenty-one (21) years of age is prohibited from purchasing, possessing, or using tobacco products and vaping devices and products. A conviction of guilt for a first offense is punishable as a Class 4 Misdemeanor, a second and subsequent offenses of this section are punishable as Class 3 Misdemeanors.

3-19-20 Furnishing or Delivering Alcoholic Beverages

Any person who shall purchase, attempt to purchase, provide money for the purchase, furnish or deliver alcoholic beverages to a person under the age of twenty-one (21) years of age is guilty of a Class 2 Misdemeanor.

3-19-21 Inhalation of Noxious Fumes

Any person who engages in the intentional inhalation of noxious fumes for the purpose of inducing an intoxicating or other unnatural state of mind, such as results from inhaling the fumes of glue, gasoline, aerosol, solvent or other similar substance which produces a mind-altering state, shall be guilty of a Class 2 Misdemeanor.

3-19-22 Minor Prohibited From Obtaining Alcoholic Beverages and Entering Liquor Establishments

Any person under the age of twenty-one (21) years of age, purchasing, attempting to purchase, furnishing money to any person for such purchases or entering any licensed premises where alcoholic beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian or if he is a law enforcement officer who is acting in performance of official duties, shall be guilty of a Class 4 Misdemeanor for a first offense; second and subsequent offenses of this section are punishable as Class 3 Misdemeanors.

3-20 Weapons and Explosives

3-20-1 Definitions

3-20-1.1 In this chapter, unless another meaning is plainly required, the following definitions apply:

a "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five (5) inches or more; any throwing star, nunchaku, or other martial arts weapon; any Billy club, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; taser, pepper spray, and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

b "Firearm" means any explosive device which will expel, or is readily capable of expelling, a projectile, by the action of an explosive and includes any such device, loaded, or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.

c "Machine gun, submachine gun, or automatic rifle" as used in this chapter shall mean and include a weapon, mechanism or instrument not requiring that the trigger be pressed for each shot, and having a reservoir, belt, or other means of sorting and

carrying ammunition which can be loaded into the weapon, mechanism, or instrument and fired therefrom at a rate of five (5) or more shots to the second.

d "Pistol" means any firearm having a barrel less than twelve (12) inches in length.

e "Public gathering" means athletic or sporting events, schools or school functions, churches or church functions, cultural events, pow-wows, political events and functions, musical concerts, and publicly or tribally owned real property operated as a business in which the public is invited as a patron or guest.

f "School safety zone" means in or on any real property owned by or leased to any public or private elementary school, secondary school, or school board and used for elementary or secondary education and in or on the campus of any public or private technical school, vocational school, college, university, or institution of postsecondary education.

g "A state contiguous to this Reservation" shall mean any state having a common border with this Reservation.

h All other terms shall be given the meaning prescribed in 18 U.S.C § 921, Gun Control Act of 1968, Public Law 90-618, and the regulations promulgated thereunder as presently enacted or as hereinafter modified.

3-20-2 Adoption of North Dakota and Federal Firearm Laws

3-20-2.1 The Three Affiliated Tribes does herein adopt the state of North Dakota firearm laws and all federal firearm laws as codified in 18 U.S.C. § 921 and any amendments made therein after the date of this adoption.

3-20-3 Prohibition on Possession of a Firearm

3-20-3.1 A person who knowingly possesses a firearm or has a firearm under the actor's control, shall be guilty of a Class 1 Misdemeanor if:

a The person has been convicted in any Tribal, State, or Federal court of any felony level offense, any assault except simple assault, or other crime involving the use, threatened use, or brandishing of a firearm;

b The person is under a court order prohibition for a domestic violence protection order or conviction of domestic violence;

c The person is under the age of eighteen (18) years and unaccompanied or supervised by a parent, guardian, or other person having lawful custody and control;

d The person has been dishonorably discharged from the military; or

e The person is a habitual drug addict, a habitual alcoholic, or individual who is emotionally and mentally unstable as diagnosed by a medical doctor.

3-20-4 Carrying Weapons onto School Property

3-20-4.1 Any person who knowingly carries to, possesses, or has under such person's control while within a school safety zone or at a school building, school function, or school property or on a bus or other transportation furnished by the school, any dangerous weapon, firearm, or explosive compound is guilty of a Class 2 Misdemeanor.

3-20-4.2 It shall be a Felony offense if the actor, while within a school safety zone or at a school building, school function, or school property or on a bus or other transportation furnished by the school, knowingly, willingly, or recklessly commits any of the following acts:

a Discharges a firearm;

b Uses a dangerous weapon in manner that is likely to cause serious bodily injury or death; or

c Detonates any explosive compound.

3-20-4.3 The provisions of this section shall not apply to:

a Sports equipment possessed by competitors for legitimate athletic purposes;

b Participants in organized sport shooting events or firearm training courses; or

c The following persons, when acting in the performance of their official duties or when enroute to or from their official duties:

(i) A law enforcement officer or related investigatory agent of the Three Affiliated Tribes, United States government or any state government;

(ii) A person employed as a campus police officer or school security officer who is authorized to carry a weapon in accordance with local laws; or

(iii) A person who has been authorized in writing by a duly authorized official of the school to have in such person's possession or use as part of any activity being conducted at a school building, school property, or school function a weapon which would otherwise be prohibited by this code section. Such authorization shall specify the weapon or weapons which have been authorized and the time period during which the authorization is valid.

3-20-5 Brandishing a Firearm

3-20-5.1 Any person, except law enforcement officers, acting within the course of their duty, whether they are on or off duty, who shall willfully brandish a firearm in front of at least one other person with the intent to threaten bodily harm, or put another in fear of bodily harm, is guilty of a Class 1 Misdemeanor.

3-20-6 Unlawful Use of a Weapon

3-20-6.1 A person commits the crime of unlawful use of a weapon, a Class 1 Misdemeanor, if the person intentionally:

a Attempts to use unlawfully against another, or carries or possesses with intent to use unlawfully against another, any dangerous or deadly weapon as defined in subsections 3-20-1.1(a)-(d); or

b Discharges a firearm, blowgun, bow and arrow, crossbow, or explosive device within city limits of any city or within residential areas within the Fort Berthold Indian Reservation, at or in the direction of any person, building, structure, or vehicle within the range of the weapon without having legal authority for such discharge.

3-20-6.2 This section does not apply to:

a Law enforcement officers or military personnel in the lawful performance of their official duties;

b Persons lawfully defending life or property as provided in sections 3-6-12, 3-6-13, and 3-6-14;

c Persons discharging firearms, blowguns, bows and arrows, crossbows, or explosive devices upon public or private shooting ranges, shooting galleries, or other areas designated and built for the purpose of target shooting;

d Persons lawfully engaged in hunting in compliance with rules and regulations adopted by the Three Affiliated Tribes Department of Game, Fish, and Recreation.

3-20-7 Use of a Dangerous Weapon or Firearm by a Child

Any parent, guardian, or other person having charge or custody of any child under the age of eighteen (18) years, and knowingly allows such child to carry any dangerous weapon or firearm as defined in subsections 3-20-1.1(a)-(d), except when such child is in the company and under the direct control of such parent, guardian, or other person authorized by the parent or guardian, is guilty of a Class 2 Misdemeanor

3-20-8 Possession of Explosives

Any person who possesses, transports, or controls any nitroglycerin, dynamite, or other dangerous explosives, unless such explosive is possessed in the course of or to effect a lawful purpose, is guilty of a Class 1 Misdemeanor.

3-20-9 Selling Firearms to Minor Prohibited

Any person who shall knowingly sell, barter, hire, lend, or give any firearm to any minor under the age of eighteen (18) years shall be guilty of a Class 1 Misdemeanor.

3-20-9.1 It shall be an exception to the above section for a parent, grandparent or relative of the first degree to give any firearm to any minor upon a signed informed consent of the parent of the minor and for the purpose of lawful sporting or hunting activities.

3-20-10 Antique Firearms

This chapter shall not apply to the purchase, possession, or sale as curiosities or ornaments, of firearms more than fifty (50) years old nor to the transportation of such firearms unloaded and, in a bag, box, or securely wrapped package, but not concealed on the person.

3-20-11 Carrying Concealed Explosive

It shall be a Class 3 Misdemeanor for a person to have in his custody, possession, or control, any nitroglycerin, dynamite, or any other dangerous or violent explosive unless such explosive is conducted in the course of or to effect a lawful and legitimate purpose.

3-20-12 Possession Presumptive Evidence of Intent to Use Weapon for Unlawful Purpose

The fact that any instrument, weapon, or explosive is carried concealed shall be evidence that the person so carrying the same intended to use the same for an unlawful purpose.

3-20-13 Use of Firearms by Children Prohibited

Any parent, guardian, or other person having charge or custody of any minors under eighteen (18) years of age who permits that minor to carry or use in public any firearm of any description, loaded with powder or lead, except when he is in the company and under the direct control of the parent, guardian, or other person authorized by the parent or guardian, is guilty of a Class 4 Misdemeanor.

3-20-14 Forfeiture of Weapons by Person Arrested and Convicted of Crime

When any firearm or sharp or dangerous weapon has been used in an attack against any person, such firearm or weapon shall be forfeited to the Three Affiliated Tribes Tribal Court upon conviction of the actor.

3-20-15 Manufacture, Use, and Sale of Black Cartridge Firearms and Firecrackers

Any person who manufactures, uses, sells, or keeps for sale within the Fort Berthold Indian Reservation any black cartridge caps, containing dynamite, or firecrackers, exceeding more than three (3) inches in length and one-half (1/2) inch in diameter, is guilty of a Class 4 Misdemeanor.

3-20-16 Dealer's License Required

Before any retail dealer may sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent sell or transfer any firearm, he must first be licensed by the federal government and the Three Affiliated Tribes Tribal Employment Rights Office.

3-20-17 Federal Firearms Licenses

This chapter shall not apply or be construed to affect in any way the purchase, receipt, or transportation of rifles and shotguns by federally licensed firearms manufactures, importers, dealers, or collectors.

3-21 Human Trafficking Code (Loren's Law per Tribal Resolution #)

3-21-1 Definitions

3-21-1.1 In this chapter, unless another meaning is plainly required, the following apply:

a "Adult" means an individual eighteen (18) years of age or older.

b "Coercion" means:

(i) The use of threat of force against, abduction of, serious harm to, or physical restraint of, an individual.

(ii) The use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of, an individual.

(iii) The abuse or threatened abuse of law or legal process.

(iv) Controlling or threatening to control an individual's access to a controlled substance.

(v) The destruction or taking of or the threatened destruction or taking of an individual's identification document or other property.

(vi) The use of debt bondage.

(vii) The use of an individual's physical or mental impairment when the impairment has a substantial adverse effect on the individual's cognitive or volitional function; or

(viii) The commission of civil or criminal fraud.

c "Commercial sexual activity" means sexual activity for which anything of value is given to, promised to, or received, by a person.

d "Debt bondage" means inducing an individual to provide commercial sexual activity in payment toward or satisfaction of a real or purported debt or inducing an individual to provide labor or services in payment toward or satisfaction of a real or purported debt. The term does not include an effort by a creditor to collect an enforceable obligation by means that are permitted under law.

e "Human trafficking" means the commission of an offense for purposes of labor or sex trafficking.

f "Identification document" means a passport, driver's license, immigration document, travel document, or other government-issued identification document, including a document issued by a foreign government.

g "Jane/John Doe" means a defendant/suspect for purposes of prosecution when the individual's identity is unknown.

h "Labor or services" means activity having economic value.

i "Labor Trafficking" means the recruitment, transportation, transfer, harboring, receiving, providing, obtaining, isolating, maintaining, or enticement of any person by any means (including telephonic or electronic) in furtherance of debt bondage, forced labor, or forced services.

j "Minor" means an individual less than eighteen (18) years of age.

k "Prostitution" means offering or agreeing to perform for hire, where there is an exchange of anything of value, or an offer to exchange anything of value for sexual activity.

l "Serious harm" means harm, whether physical or nonphysical, including psychological, economic, or reputational, to an individual which would compel a reasonable individual of the same background and in the same circumstances to

perform or continue to perform labor or services or sexual activity to avoid incurring the harm.

m "Sexual activity" means all sexual conduct as defined in subsection 3-11-1(w). The term includes a sexually explicit performance.

n "Sex trafficking" means the recruitment, transportation, transfer, harboring, receiving, providing, obtaining, isolating, maintaining, or enticement by any means (including telephonic or electronic) in furtherance of prostitution or other commercial sexual activity.

o "Traditional restitution" means any tribal cultural, customary, or traditional compensation determined as part of a custom-law finding certified to a tribal judge subsequent to:

(i) Notice of the custom-law proceeding; and

(ii) Appointment of a custom-law advisory board who shall participate in the finding and outcome of the certification.

p "Victim" means an individual who is subjected to human trafficking or to conduct that would constitute human trafficking, regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.

q "Victim Restitution" means any payment of a victim's documented costs of medical treatment, counseling, substance abuse treatment, or any financial damage caused by the act of human trafficking regardless of the race of the victim.

3-21-2 Human Trafficking

3-21-2.1 A person is guilty of the offense of trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:

a Forced labor in violation of section 3-21-3; or

b Sexual servitude in violation of subsection 3-21-1(d).

3-21-2.2 Trafficking any individual, adult, or minor, is a Felony offense.

a There is no statute limitation on the time in which a charge may be filed, or prosecution may commence, for any offense under Loren's Law involving a victim who is a minor at the time of the alleged offense.

b The Tribe shall file a criminal complaint against a 'John/Jane Doe' where there is physical or other credible evidence (forensic interview /examination, DNA, fingerprints, false name given, etc.) that a child is a victim of a human trafficking crime but where the perpetrator name is unknown.

3-21-3 Labor Trafficking

3-21-3.1 A person is guilty of labor trafficking if the individual knowingly commits any one or more of the following acts:

a Benefits financially or receives anything of value while knowing or having reason to know the financial benefit or thing of value is derived from an act of labor trafficking;

b Uses coercion to compel an individual to provide forced labor or services; or

c Attempts or conspires to promote labor trafficking as defined in subsection 3-21-1.1(i).

3-21-3.2 It is a Felony offense if the victim of labor trafficking is an adult or minor as defined in subsections 3-21-1.1(a) and (j).

3-21-4 Sex Trafficking

3-21-4.1 A person is guilty of sex trafficking if the individual knowingly commits any one or more of the following acts:

a Benefits financially or receives anything of value while knowing or having reason to know the financial benefit or thing of value is derived from an act of sex trafficking;
b Maintains or makes available a minor for the purpose of engaging in commercial sexual activity;
c Uses coercion or deception to compel an individual to engage in commercial sexual activity; or
d Attempts or conspires to promote sex trafficking as defined in subsection 3-21-1.1(n).

3-21-4.2 It is not a defense in a prosecution under subsection 3-21-4.1(b) that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.

3-21-4.3 It is a Felony offense if the victim of sex trafficking is an adult or minor as defined in subsections 3-21-1.1(a) and (j).

3-21-5 Patronizing a Victim of Sex Trafficking

3-21-5.1 A person is guilty of the offense of patronizing a victim of sex trafficking if the person knowingly gives, agrees to give, or offers to give anything of value so that an individual may engage in commercial sexual activity with another individual and the person knows that the other individual is a victim of sex trafficking.

3-21-5.2 Patronizing an adult or minor victim of sex trafficking is a Felony offense. Adult and minor have the meanings as defined in subsections 3-21-1.1(a) and (j).

3-21-6 Patronizing a Minor for Commercial Sexual Activity

3-21-6.1 A person is guilty of patronizing a minor for commercial sexual activity, a Felony offense, if, with the intent that the person engage in commercial sexual activity with a minor, the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the person may engage in commercial sexual activity with a minor.

3-21-7 Business Entity Liability

3-21-7.1 A person who is a member of a business entity knowingly engaged in the business of human, sex, or labor trafficking may be prosecuted for an offense under sections 3-21-2, 3-21-3, or 3-21-4.

3-21-7.2 When a person who is a member of a business entity engaged in the business of human, sex, or labor trafficking is prosecuted for an offense under sections 3-21-2, 3-21-3, or 3-21-4, the court may consider the severity of the entity's conduct and order penalties in addition to those otherwise provided for the offense, including:
a Forfeiture of all profit and property derived from activity in violation of this chapter; and
b Debarment from future tribal government contracts.

3-21-8 Restitution

3-21-8.1 The court shall order a person convicted of an offense under sections 3-21-2, 3-21-3, or 3-21-4 to pay restitution to the victim of the offense for:
a Expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including costs of medical services relating to physical, psychiatric, or psychological care;
b Physical and occupational therapy or rehabilitation;
c Necessary transportation, temporary housing, and childcare expenses;
d Lost income;

e Reasonable attorney fees, as well as other costs incurred; and
f The greater of the gross income or value of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201 et. seq.).

3-21-8.2 If the court has ordered restitution for the victim of the trafficking offense, and the victim does not claim the restitution ordered within five (5) years after entry of the order, the restitution may be subrogated to the Victims of Crime Advocacy Center for payment.

3-21-9 Past Sexual Behavior of Victim

3-21-9.1 In a prosecution for an offense under this chapter, evidence of a specific instance of the alleged victim's past sexual behavior or reputation or opinion evidence of past sexual behavior of the alleged victim is not admissible unless the evidence is:
a Admitted in accordance with Federal Rules of Evidence; or
b Offered by the prosecution to prove a pattern of trafficking by the defendant.

3-21-10 Victim Confidentiality

3-21-10.1 In an investigation of or prosecution for an offense under Loren's Law, a law enforcement agency and the tribal prosecutor shall keep confidential the identity, pictures, and images of the alleged victim and the family of the alleged victim, except to the extent that disclosure is:
a Necessary for the purpose of investigation or prosecution;
b Required by law or court order; or
c Necessary to ensure provision of services or benefits for the victim or the victim's family.

3-21-11 Affirmative Defense of Victim

3-21-11.1 An individual charged with prostitution, felony forgery, felony theft, felony drug distribution, or any other offense which was committed as a direct result of being a victim may assert an affirmative defense that the individual is a victim of human trafficking.

3-21-11.2 If the individual charged with a tribal offense was a minor at the time of the offense and committed the offense as a direct result of being a victim under this chapter, the minor is not criminally liable or subject to juvenile delinquency proceedings pursuant to the Three Affiliated Tribes Juvenile Code.

3-21-12 Additional Penalties and Sentencing Alternatives

3-21-12.1 Upon conviction of any offense under Loren's Law, the court may, in addition to the statutorily prescribed sentence, sentence the defendant to any of the following:
a Exclusion from the Fort Berthold Indian Reservation;
b Up to five (5) years of probation;
c Loss of firearm privileges;
d Substance abuse treatment;
e No contact or protection order for the victim of the offense;
f Loss of business license;
g Victim restitution;
h Special payment to Victims of Crime Advocacy Center;
i Traditional restitution;
j Loss of hunting and/or fishing privileges;
k Diversion of tribal per capita payments; and
l Require defendant to comply with Sex Offender Registry requirement.

3-21-12.2 Violations of the provisions of Loren's Law may be subject to prosecution under both Tribal and Federal jurisdictions.

3-21-13 Motion to Vacate and Seal Conviction

3-21-13.1 An individual convicted of prostitution, or an offense listed in section 3-21-11 which was committed as a direct result of being a victim may apply by motion to the court to vacate the conviction and seal the record of conviction. The court may grant the motion on a finding that the individual's participation in the offense was a direct result of being a victim.

3-21-13.2 Official determination or documentation from a federal, state, local, or tribal agency that the individual was a victim at the time of the offense creates a presumption that the individual's participation was a direct result of being a victim.

3-21-14 Civil Action

3-21-14.1 A victim may bring a civil action against a person that commits an offense against the victim under sections 3-21-2, 3-21-3, or 3-21-4 for compensatory damages, exemplary or punitive damages, injunctive relief, and any other appropriate relief.

3-21-14.2 If a victim prevails in an action under this section, the court shall award the victim reasonable attorney's fees and costs.

3-21-14.3 An action under this section must be commenced not later than ten (10) years after the later of the date on which the victim:

a Ceased to be a subject to human trafficking; or

b In the case of a minor victim, the period for commencement of the action does not begin to run until the victim has attained eighteen (18) years of age.

3-21-14.4 Damages awarded to a victim under this section for an item must be offset by any restitution paid to the victim pursuant to subsections 3-21-8.1(a-f) for the same item.

3-21-14.5 This section does not preclude any other remedy available to a victim under federal law or law of this chapter.

3-21-15 Treatment

3-21-15.1 Upon the defendant's guilty plea or conviction of a violation of any offense under Loren's Law, the judge may order an assessment of the defendant by a probation officer or other qualified service provider to ascertain a correct treatment plan for the defendant.

a Upon the recommendation by the probation officer or other qualified assessment personnel, the court may order treatment, including but not limited to, substance abuse counseling, mental health, parenting, anger management, sexual offender treatment, or job training and make this order part of the defendant's probation or release. Failure to complete the term(s) of probation or release shall constitute a probation or release violation and may subject the defendant to incarceration or other sanctions.

3-21-15.2 Upon the defendant's guilty plea or conviction for a violation of any offense under Loren's Law, the judge may order an assessment of the victim by a qualified service provider.

a The victim may choose to accept or deny the evaluation.

b Upon recommendations by a qualified service provider, treatment in the form of, but not limited to, substance abuse counseling, mental health, parenting, anger management, or job training may be ordered by the court.

c All expenses incurred will be assessed as the victim's restitution and will be the responsibility of the defendant to pay. Services shall be provided to the victim regardless of race.

3-22 Amended Sexual Offenders Registration and Notification Act

3-22-1 Title

3-22-1.1 This Chapter shall be cited as the Three Affiliated Tribes Sex Offender Registration and Notification Act.

3-22-2 Purpose

3-22-2.1 The purpose of this chapter is to implement the Federal Sex Offender Registration and Notification Act (SORNA) (Title 1 of the Adam Walsh Act, Public Law 109-248) and shall be interpreted liberally to comply with the terms and conditions of SORNA as written or hereinafter amended. The purpose of this enactment is to become a registration jurisdiction and to assist the Tribe and law enforcement in identifying and tracking sex offenders, to prevent future sex offenses, especially those against children, and to inform and alert the public when a sex offender is residing on or located on the Reservation in the interests of community safety.

3-22-3 Definitions

3-22-3.1 The following definitions shall apply to this chapter only:

a "Convicted" An adult sex offender is "convicted" for the purposes of this chapter if the sex offender has been subjected to penal consequences based on the conviction, however the conviction may be styled. A juvenile offender is "convicted" for purposes of this code if the juvenile offender is either:

(i) Prosecuted and found guilty as an adult for a sex offense; or

(ii) Is adjudicated delinquent as a juvenile for a sex offense, but only if the offender is fourteen (14) years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in 18 U.S.C. §§ 2241(a) or (b)) or was an attempt or conspiracy to commit such an offense.

b "Foreign Convictions" is one obtained outside the United States.

c "Employee" as used in this chapter includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation. Volunteers of a tribal agency or organization are included within the definition of employee for registration purposes.

d "Immediate" and "immediately" means within three (3) Tribal court business days.

e "Imprisonment" refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state "prison" as well as in a federal, military, foreign, BIA, private or contract facility, or a local or tribal detention center. Persons under "house arrest" following conviction of a covered sex offense are required to register pursuant to the provisions of this code during their period of "house arrest".

f "Indian" status shall be determined in accordance with prevailing federal law as it applies within the jurisdiction of the United States Court of Appeals for the 8th Circuit.

g "Jurisdiction" as used in this chapter refers to the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, to the extent provided and subject to the requirements of 34 U.S.C. § 20929, a federally recognized Indian tribe. (34 U.S.C. § 20911(10)).

h "Minor" means an individual who has not attained the age of eighteen (18) years.

i "Reside" or "resides" means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives or sleeps.

j "Sex Offense" as used in this chapter includes those offenses contained in 34 U.S.C. 20911(5) and those offenses enumerated in section 3-22-4 of this title or any other registerable offense under Tribal law. An offense involving consensual sexual contact is not a sex offense for the purposes of the Sex Offender Registration and Notification Act/Code if the victim was an adult, unless the adult victim was under the custodial authority of the offender at the time of the offense, or if the victim was at least seventeen (17) years old and the offender was not more than four (4) years older than the victim.

k "Sex Offender" means a person convicted of a sex offense.

l "Sexual Act" as used in this chapter means:

(i) Contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;

(ii) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(iii) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(iv) The intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of eighteen (18) years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

m "Sexual Contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of another person.

n "Student" means a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, or an institution of higher education.

o "SORNA" means the Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006 P.L. 109-248), 34 U.S.C. § 20901 et seq., as amended.

p "Sex Offender Registry" means the registry of sex offenders, and a notification program, maintained by the Three Affiliated Tribes Law Enforcement Services.

q "National Sex Offender Registry (NSOR)" The national database maintained by the Federal Bureau of Investigation pursuant to 34 U.S.C. § 20921.

r "SMART Office" means the office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States Department of Justice under the general authority of the Attorney General of the United States pursuant to 34 U.S.C. § 20945.

s "Dru Sjodin National Sex Offender Public Website (NSOPW)" means the public website maintained by the Attorney General of the United States pursuant to 34 U.S.C. § 20922.

t Tier I Sex Offender" means any person that has been convicted of a "Tier I" sex offense as defined in subsection 3-22-6.1.

u "Tier II Sex Offender" means any person that has been either convicted of a "Tier II" sex offense as defined in subsection 3-22-6.2 or who is subject to the recidivist provisions of subsections 3-22-6.2(a)-(c).

v "Tier III Sex Offender" means any person that has been either convicted of a "Tier III" sex offense as defined in subsection 3-22-6.3 or who is subject to the recidivist provisions of subsections 3-22-6.3(a)-(d).

w "Reservation" means the Fort Berthold Indian Reservation as established by the Act of March 3, 1891 (26 Stat. 1032) and by Executive Order dated June 17, 1892.

x "Tribe" means the Three Affiliated Tribes, also known as the Mandan Hidatsa Arikara Nation.

y "Tribal court" means the Fort Berthold District Court.

3-22-4 Registerable Offenses

3-22-4.1 Offenders subject to the provisions of this chapter are not limited to tribal members or Indians convicted or sentenced in Tribal court. All sex offenders who have been convicted, sentenced, and required to register as sex offenders by a tribal, federal, or state court also are subject to the provisions of this chapter, if the sex offender meets any of the conditions set forth below in this subsection or at subsections 3-22-4.2, 3-22-4.3, 3-22-4.4, and 3-22-4.5:

a A conviction of, or a conviction for an attempt or a conspiracy to commit, any of the following under Tribal law or under substantially similar state or tribal law

i T.A.T.C.C. § 3-11-2 (rape);
ii T.A.T.C.C. § 3-11-3 (assault with intent to commit rape);
iii T.A.T.C.C. § 3-11-4 (statutory rape);
iv T.A.T.C.C. § 3-11-7 (sexual assault of a child);
v T.A.T.C.C. § 3-11-8 (indecent exposure); (Enhanced penalty-exposure to minors)
vi T.A.T.C.C. § 3-21-4(sex trafficking);
vii T.A.T.C.C. § 3-11-15 (video voyeurism);
viii T.A.T.C.C. § 3-11-16 (entering Reservation with a child to engage in sexual act);
ix T.A.T.C.C. § 3-11-17 (sexual exploitation of children);
x T.A.T.C.C. § 3-11-18 (buying or selling children);
xi T.A.T.C.C. § 3-11-19 (materials involving sexual exploitation of children);
xii T.A.T.C.C. § 3-11-20 (materials constituting or containing child pornography);
xiii T.A.T.C.C. § 3-11-22 (misleading domain name on the internet);
xiv T.A.T.C.C. § 3-11-23 (misleading words or digital images on the internet); and
xv T.A.T.C.C. § 3-11-23 (use of child's name for illicit purpose).

b A pardon granted by the Tribe as to any of the foregoing offenses shall not terminate or modify the requirements of registration otherwise imposed by this chapter.

3-22-4.2 Federal Offenses – A conviction of, or a conviction for an attempt or a conspiracy to commit, any of the following, and any other offense hereinafter included in the definition of "sex offense" at 42 U.S.C. § 16911(5) including offenses prosecuted under the Assimilative Crimes Act, 18 U.S.C. §§1152 or 1153:

a 18 U.S.C. § 1591 (sex trafficking of children);
b 18 U.S.C. § 1801 (video voyeurism of a minor);
c 18 U.S.C. § 2241 (aggravated sexual abuse);
d 18 U.S.C. § 2242 (sexual abuse);
e 18 U.S.C. § 2243 (sexual abuse of a minor or ward);
f 18 U.S.C. § 2244 (abusive sexual contact);
g 18 U.S.C. § 2245 (offenses resulting in death);
h 18 U.S.C. § 2251 (sexual exploitation of children);
i 18 U.S.C. § 2251A (selling or buying of children);
j 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor);
k 18 U.S.C. § 2252A (material containing child pornography);

l 18 U.S.C. § 2252B (misleading domain names on the internet);
m 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the U.S.);
n 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity);
o 18 U.S.C. § 2422 (coercion and enticement of a minor for illegal sexual activity);
p 18 U.S.C. § 2423(a-d) (transportation of minors for illegal sexual activity; travel with the intent to engage in illicit sexual conduct with a minor, engaging in illicit sexual conduct in foreign places);
q 18 U.S.C. § 2424 (filing factual statement about alien individual); and
r 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).

3-22-4.3 Foreign Country Offenses – Any conviction for a sex offense involving any conduct listed in this chapter that was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or under the laws of any foreign country when the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

3-22-4.4 Military Offenses – Any military offense specified by the Secretary of Defense under section 115(a)(8)(C) (i) of Public Law 105-119 (codified at 10 U.S.C. 951).

3-22-4.5 Juvenile Offenses or Adjudication – Any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. § 2241) and committed by a minor who is fourteen (14) years of age or older at the time of the offense.

a This includes engaging in a sexual act with another by force or the threat of serious violence; or engaging in a sexual act with another by rendering unconscious or engaging in a sexual act with an involuntarily drugged victim.
b Adjudications of delinquency of minors fourteen (14) years of age or older, of offenses listed in this subsection shall be tiered as set forth in subsections 3-22-6.1(b) Tier I, 3-22-6.2(b) Tier II, and 3-22-6.3(b)(iv) Tier III of this chapter. With regard to adjudications of delinquency of minors, Tier I and II offenses are exempt from all registration requirements.
c Adjudication of delinquency of minors fourteen (14) years of age or older of any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse (18 U.S.C, § 2241) and subsection 3-22-6.3 Tier III of this chapter shall be subject to registration requirements and included in the National Sex Offender Registry (NSOR), but exempt from inclusion in the Three Affiliated Tribes Sex Offender Registry (TATSOR).

3-22-4.6 Jurisdiction Offenses – Jurisdictions, including the jurisdiction of the Three Affiliated Tribes, are required to register any person who has been convicted of a criminal sex offense in any state, tribe, territory, or the District of Columbia, and any foreign country that involves:

a Any type or degree of genital, oral, or anal penetration;
b Any sexual touching of or sexual contact with a person's body, either directly or through the clothing;
c Kidnapping of a minor;
d False imprisonment of a minor;

e Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct;
f Use of a minor in a sexual performance;
g Solicitation of a minor to practice prostitution;
h Possession, production, or distribution of child pornography;
i Criminal sexual conduct that involves physical contact with a minor or the use of the internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense;
j Any conduct that by its nature is a sex offense against a minor, or
k Any offense similar to those outlined in:
(i) Tribal offenses, subsection 3-22-4.1; or
(ii) Federal offenses, subsection 3-22-4.2.

3-22-5 Sex Offenses

3-22-5.1 Except as limited by subsections 3-22-5.1(f)-(g) below, the term "sex offense" means:
a A criminal offense that has an element involving a sexual act or sexual contact with another;
b The term "specified offense against a minor" means an offense against a minor that involves any of the following:
(i) An offense (unless committed by parent or guardian) involving kidnapping;
(ii) An offense (unless committed by a parent or guardian) involving false imprisonment;
(iii) Solicitation to engage in sexual conduct;
(iv) Use in a sexual performance;
(v) Solicitation to practice prostitution;
(vi) Video voyeurism as described in 18 U.S.C. §1801;
(vii) Possession, production, or distribution of child pornography;
(viii) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct; and
(ix) Any conduct that by its nature is a sex offense against a minor.
c A Federal offense including an offense prosecuted under U.S.C. Title 18, §§ 1152 or 1153 or 1591; or Title 18, Chapter 109A-Sexual Abuse; or Title 18, Chapter 110-Sexual Exploitation and Other Abuse of Children (other than U.S.C. Title 18 §§ 117, 2257, 2257A, or 2258).
d A military offense specified by the Secretary of Defense under § 11 S(a)(S)(C)(I) of Public Law 105-119 (10 U.S.C. § 951 note);
e An attempt or conspiracy to commit an offense described in subsections 3-22-5.1 (a)-(d);
f An offense involving consensual sexual conduct is not a sex offense for the purposes of this code if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was not less than seventeen (17) years old and the offender was not more than four (4) years older than the victim.
g A foreign conviction is not a sex offense for the purposes of this code unless it was either:
(i) Obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or
(ii) Under the laws of any foreign country when the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent

judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

3-22-6 Tiering of Offenses

3-22-6.1 Tier I Offenses – Under this section, Tier I offenses are established as follows:

a Tier I offenses include any sex offense, for which a person has been convicted, or an attempt to commit such an offense, that is not categorized as a Tier II or Tier III offense.

b Tier I offenses also include any offense for which a person has been convicted by any jurisdiction of the United States, tribal government, or qualifying foreign government pursuant to subsections 3-22-4.3 and 3-22-5.1(g), that involves the false imprisonment of a minor, video voyeurism of a minor, or possession or receipt of child pornography.

c Any tribal sex offense covered by this title of offenses which is sentenced as a Class 3 or 4 offense level.

d Conviction for any of the following federal offenses, in addition to those previously determined in (b) of this subsection:

(i) 18 U.S.C. §2252B (misleading domain names on the internet);
(ii) 18 U.S.C. §2252C (misleading words or digital images on the internet);
(iii) 18 U.S.C. §2422 (coercion to engage in prostitution);
(iv) 18 U.S.C. §2423 (Mann Act), (a)(transportation of person [adult/child] ancillary offenses), (b) (travel with the intent to engage in illicit conduct), and (c) (engaging in illicit conduct in foreign places);
(v) 18 U.S.C. §2424 (failure to file factual statement about an alien individual); or
(vi) 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

e Certain Military Offenses - Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. §951 note) that is similar to those offenses outlined in subsections 3-22-6.1(a)-(d) shall be considered a "Tier I" offense.

3-22-6.2 Tier II Offenses – Under this section, Tier II offenses are established as follows:

a Recidivism and Felonies: Unless otherwise covered by subsection 3-22-6.3 of this chapter, any sex offense that is not the first sex offense for which a person has been convicted and that is punishable by more than one (1) year in jail is considered a Tier II offense.

b Offenses Involving Minors: Any sex offense against a minor for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that involves:

(i) The use of minors in prostitution, including solicitations,
(ii) Enticing a minor to engage in criminal sexual activity,
(iii) Sexual contact with a minor under eighteen (18) years of age, whether directly or indirectly through the clothing, that involves the intimate parts of the body,
(iv) The use of a minor in a sexual performance, or
(v) The non-forcible sexual act with a minor sixteen (16) or seventeen (17) years old.

c Federal Offenses: Conviction for any of the following federal offenses:

(i) 18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion);
(ii) 18 U.S.C. § 2243 (sexual abuse of a minor or ward);
(iii) 18 U.S.C. § 2244 (abusive sexual contact, where the victim is under eighteen (18) years of age);
(iv) 18 U.S.C. § 2251 (sexual exploitation of children);
(v) 18 U.S.C. § 2251A (selling or buying of children);
(vi) 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor);

(vii) 18 U.S.C. § 2252A (production/distribution of material containing child pornography);
(viii) 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the United States);
(ix) 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity);
(x) 18 U.S.C. § 2422(b) (coercing a minor to engage in prostitution);
(xi) 18 U.S.C. § 2423(a) (transporting a minor to engage in illicit conduct);
(xii) 18 U.S.C. § 2423(b) (travel with intent to engage in criminal sexual activity with a minor);
(xiii) 18 U.S.C. § 2423(c) (engaging in illicit sexual conduct in foreign places with a minor);
(xiv) 18 U.S.C. § 2423(d) (arranging, inducing, procuring, or facilitating the travel in interstate commerce of a minor for the purpose of engaging in illicit conduct for financial gain);
(xv) 18 U.S.C. § 2424 (filing factual statements about alien individual); and
(xvi) 18 U.S.C. § 2425 (use of interstate facilities to transmit information about a minor).

d Certain Military Offenses – Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. §951 note) that is similar to those offenses outlined in subsections 3-22-6.2(a)-(c) shall be considered a "Tier II" offense.

3-22-6.3 Tier III Offenses – Under this section, Tier III offenses are established as follows:

a Recidivism and Felonies: Any sex offense that is punishable by more than one (1) year in jail where the offender has at least one prior conviction for a Tier II sex offense, or has previously become a Tier II sex offender, is a Tier III offense.

b General Offenses: Any sex offense for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that involves:
(i) Non-parental kidnapping of a minor,
(ii) A sexual act with another by force or threat,
(iii) A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate, or
(iv) Sexual contact with a minor under eighteen (18) years of age including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing.

c Conviction for any of the following Federal offenses:
(i) 18 U.S.C. §2241 (aggravated sexual abuse),
(ii) 18 U.S.C. §2242 (sexual abuse),
(iii) 18 U.S.C. §2243 (sexual abuse of a minor or ward),
(iv) Where the victim is under eighteen (18) years of age, 18 U.S.C. §2244 (abusive sexual contact).

d Certain Military Offenses: Any military offense specified by the Secretary of Defense under section 115(a) (8) (C) (i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note) that is similar to those offenses outlined in subsections 3-22-6.3(a)-(c) of this chapter.

3-22-7 Three Affiliated Tribes' Sex Offender Registry and Registration Requirements Tribal Sex Offender Registry

3-22-7.1 Sex Offender Registry

It is herein established that the Three Affiliated Tribes shall maintain a Sex Offender Registry which shall consist at a minimum of a database of all persons residing on the Reservation who are required by section 3-22-4 of this chapter to register, with the information required in section 3-22-13 of this chapter. The Tribe's Law Enforcement Services shall be responsible to maintain the Sex Offender Registry. The Sex Offender Registry shall be maintained in an electronic database and shall be in a form capable of electronic transmission.

3-22-8 Requirements for In-Person Appearance

3-22-8.1 Photographs

At each in-person verification, the sex offender shall permit the Three Affiliated Tribes Law Enforcement Services to take a photograph of the offender.

3-22-8.2 Review of Information

At each in-person verification the sex offender shall review existing information for accuracy.

3-22-8.3 Notification

If any new information or change in information is obtained at an in-person verification, the Three Affiliated Tribes Law Enforcement Services shall immediately notify all other jurisdictions in which the sex offender is required to register of the information or change in information.

3-22-8.4 The Three Affiliated Tribes Law Enforcement Services shall obtain all the information required in this chapter from covered sex offenders who are required to register with the Tribe in accordance with this chapter and shall implement any relevant policies and procedures to effect the orderly process of collection of information and registration.

3-22-9 When Registration is Required

3-22-9.1 Jurisdiction of Conviction

A sex offender must initially register with the Three Affiliated Tribes Law Enforcement Services if the sex offender was convicted by the Tribal court of a covered sex offense regardless of the sex offender's actual or intended residency.

3-22-9.2 Jurisdiction of Incarceration

A sex offender must register with the Three Affiliated Tribes Law Enforcement Services if the sex offender is incarcerated by the Tribe while completing any sentence for a covered sex offense, regardless of whether it is the same jurisdiction as the jurisdiction of conviction or residence.

3-22-9.3 Jurisdiction of Residence

A sex offender must register with the Three Affiliated Tribes Law Enforcement Services if the sex offender resides within the boundaries of the Fort Berthold Indian Reservation.

3-22-9.4 Jurisdiction of Employment

A sex offender must register with the Three Affiliated Tribes Law Enforcement Services if he is employed in the Fort Berthold Indian Reservation jurisdiction, but neither resides nor attends school there. The offender must update any employment related information in this jurisdiction, including termination of employment, and if he is employed with the Tribe in any capacity, whether compensated or not.

3-22-9.5 Jurisdiction of School Attendance

A sex offender must register with the Three Affiliated Tribes Law Enforcement Services if the sex offender is a student who is enrolled in or attends an educational institution, including a secondary school (whether public or private), trade or professional school, or institution of higher education, in any capacity, to include termination of school attendance, within the boundaries of the Fort Berthold Indian Reservation.

3-22-10 Timing of Registration

3-22-10.1 Timing

A sex offender required to register with under this chapter shall do so in the following timeframes:

a If convicted by the Three Affiliated Tribes for a covered sex offense and incarcerated, the sex offender must register before being released from incarceration;

b If convicted by the Tribe but not incarcerated, within three (3) business days of sentencing for the registrable offense; or

c Within three (3) business days of establishing a residence, commencing employment, or becoming a student within the boundaries of the Fort Berthold Indian Reservation,.

d a sex offender must appear in person to register with the Tribe's Law Enforcement Services.

3-22-10.2 Policies and Procedures

The Three Affiliated Tribes Law Enforcement Services shall have policies and procedures in place to ensure the following:

a That any sex offender incarcerated or sentenced by the Tribe for a covered sex offense completes their initial registration with the Tribe;

b That the sex offender reads, or has read to them, and signs a form stating that the duty to register has been explained to them and that the sex offender understands the registration requirement;

c That the sex offender is registered, and information posted on public website; and

d That upon entry of the sex offender's information into the registry, that information is immediately forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment, or student status.

3-22-11 Frequency, Duration, and Reduction of Registration

3-22-11.1 The following are the requirements for registration, duration, and reduction under this chapter:

a Frequency – A sex offender who is required to register shall, at a minimum, appear in person at the Three Affiliated Tribes Law Enforcement Services for purposes of verification and keeping their registration current in accordance with the following time frames:

(i) For Tier I offenders, once every year for fifteen (15) years from the time of release from custody for a sex offender who is incarcerated for the registrable offense or from the date of sentencing for a sex offender who is not incarcerated for the registrable offense;

(ii) For Tier II offenders, once every 180 days for twenty-five (25) years from the time of release from custody for a sex offender who is incarcerated for the registrable offense or from the date of sentencing for a sex offender who is not incarcerated for the registrable offense.

(iii) For Tier III offenders, once every 90 days for the rest of their lives.

3-22-11.2 Reduction of Registration Periods

A sex offender may have their period of registration reduced as follows:

a A Tier I offender may have his period of registration reduced to ten (10) years if he has maintained a clean record for ten (10) consecutive years;

b A Tier III offender may have his period of registration reduced to twenty-five (25) years if he was adjudicated delinquent of an offense as a juvenile that required the Tier III registration and he has maintained a clean record for twenty (25) consecutive years.

3-22-11.3 Clean Record

For purposes of the above subsection 3-22-11.2, a person has a clean record if:

a He has not been convicted of any offense for which imprisonment for more than one (1) year may be imposed;

b He has not been convicted of any sex offense;

c He has successfully completed, without revocation, any period of supervised release, probation, or parole; and

d He has successfully completed an appropriate sex offender treatment program certified by the Tribe, another jurisdiction, or by the Attorney General of the United States.

3-22-12 Failure to Appear and Absconding

3-22-12.1 Failure to Appear

In the event a sex offender fails to register with the Three Affiliated Tribes as required by this chapter, the Tribe's Law Enforcement Services, or authorized designee, shall immediately inform the jurisdiction which provided notification that the sex offender was to commence residency, employment, or school attendance with the Tribe that the sex offender failed to appear for registration.

3-22-12.2 Absconded Sex Offenders

If the Three Affiliated Tribes Law Enforcement Services or an authorized designee receives information that a sex offender has absconded, the Tribe's Law Enforcement Services shall make diligent efforts to determine if the sex offender has actually absconded.

a In the event no determination can be made, the Tribe's Law Enforcement Services or authorized designee shall ensure the Tribal police and any other appropriate law enforcement agency is notified.

b If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, they shall be informed that the sex offender has failed to appear and register.

c If an absconded sex offender cannot be located, then the Tribal police shall take the following steps:

(i) Update the registry to reflect the sex offender has absconded or is otherwise not capable of being located;

(ii) Notify the U.S. Marshals Service;

(iii) Seek a warrant for the sex offender's arrest. The U.S. Marshals Service or FBI may be contacted in an attempt to obtain a federal warrant for the sex offender's arrest;

(iv) Update the NSOR to reflect the sex offender's status as an absconder, or as otherwise not capable of being located; and

(v) Enter the sex offender into the National Crime Information Center Wanted Person File.

3-22-12.3 Failure to Register

In the event a sex offender who is required to register due to his employment or school attendance status fails to do so or otherwise violates a registration requirement of this chapter,

the Three Affiliated Tribes Law Enforcement Services shall take all appropriate follow-up measures including those outlined in subsection 3-22-12.2 above.

3-22-13 Required Information

3-22-13.1 General Requirements

This section sets forth the information that is required to be obtained in the registration process.

a Duties: A sex offender covered by this chapter who is required to register pursuant to section 3-22-4 of this chapter shall provide all of the information detailed in this chapter to the Three Affiliated Tribes Law Enforcement Services, which shall obtain all of the information detailed in this chapter and shall implement any relevant policies and procedures to ensure compliance.

b Digitization: All information obtained under this chapter shall be, at a minimum, maintained by the Tribe's Law Enforcement Services in a digitized format.

c Electronic Database: A sex offender registry shall be maintained in an electronic database by the Tribe's Law Enforcement Services and shall be in a form capable of electronic transmission.

3-22-13.2 Criminal History

The Three Affiliated Tribes Law Enforcement Services or an authorized designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's criminal history:

a The date of all arrests;
b The date of all convictions;
c The sex offender's status of parole, probation, or supervised release;
d The sex offender's registration status; and
e Any outstanding arrest warrants.

3-22-13.3 Date of Birth

The Three Affiliated Tribes Law Enforcement Services or an authorized designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's date of birth:

a The sex offender's actual date of birth; and
b Any other date of birth used by the sex offender.

3-22-13.4 DNA Sample

If the sex offender's DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide the Three Affiliated Tribes Law Enforcement Services or an authorized designee a sample of his DNA. Any DNA sample obtained from a sex offender shall be submitted to an appropriate lab for analysis and entry of the resulting DNA profile into CODIS.

3-22-13.5 Driver's License, Identification Cards, Passports, and Immigration Documents

a Driver's License – The Three Affiliated Tribes Law Enforcement Services or an authorized designee shall obtain, and a covered sex offender shall provide, a photocopy of all the sex offender's valid driver's licenses issued by any jurisdiction;

b Identification Cards – The Tribe's Law Enforcement Services or an authorized designee shall obtain, and a covered sex offender shall provide, a photocopy of any identification card including the sex offender's tribal enrollment card issued by any jurisdiction;

c Passports – The Tribe's Law Enforcement Services or an authorized designee shall obtain digitized copies, and a covered sex offender shall provide a photocopy, of any identification used by the sex offender; and

d Immigration Documents – The Tribe's Law Enforcement Services or an authorized designee shall obtain digitized copies, and a covered sex offender shall provide a photocopy, of all immigration documents.

3-22-13.6 Employment Information

The Three Affiliated Tribes Law Enforcement or an authorized designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's employment in that jurisdiction and termination in that jurisdiction, to include all places where the sex offender is employed in any means including volunteer and unpaid positions:

a The name of the sex offender's employer;
b The address of the sex offender's employer; and
c Similar information related to any transient or day labor employment.

3-22-13.7 Finger and Palm Prints

The Three Affiliated Tribes Law Enforcement Services or an authorized designee shall obtain, and a covered sex offender shall provide, both fingerprints and palm prints of the sex offender in a digitized format. Palm prints will be taken and submitted to the FBI Central Database (Next Generation Identification Program).

3-22-13.8 Internet

The Three Affiliated Tribes Law Enforcement Services or an authorized designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's internet related activity:

a All email addresses used by the sex offender;
b All Instant Message addresses and identifiers;
c All other designations or monikers used for self-identification in internet communications or postings; and
d All designations used by the sex offender for the purpose of routing or self-identification in internet communication or postings.

3-22-13.9 Name

The Three Affiliated Tribes Law Enforcement Services or an authorized designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's name:

a The sex offender's full primary given name;
b Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used; and
c Any and all ethnic or tribal names by which the sex offender is commonly known. This does include any religious or sacred names not otherwise commonly known.

3-22-13.10 Phone Numbers

The Three Affiliated Tribes Law Enforcement Services or an authorized designee shall obtain, and a covered sex offender shall provide, all landline numbers and any and all cellular phone numbers.

3-22-13.11 Picture

The Three Affiliated Tribes Law Enforcement Services or an authorized designee shall obtain, and a covered sex offender shall provide, a current photograph of the sex offender. Unless the

appearance of a sex offender has not changed significantly, a digitized photograph shall be collected:

a Every ninety (90) days for Tier III sex offenders;
b Every one hundred eighty (180) days for Tier II sex offenders; and
c Each year for Tier I sex offenders.

3-22-13.12 Physical Description

The Three Affiliated Tribes Law Enforcement Services or an authorized designee shall obtain, and a covered sex offender shall provide, an accurate description of the sex off ender as follows:

a A physical description;
b A general description of the sex offender's physical appearance or characteristics; and
c Any identifying marks, such as, but not limited to, scars, moles, birthmarks, or tattoos.

3-22-13.13 Professional Licensing Information

The Three Affiliated Tribes Law Enforcement Services or an authorized designee shall obtain, and a covered sex offender shall provide, all licensing of the sex offender that authorizes the sex offender to engage in an occupation or conduct a trade or business.

3-22-13.14 Residence Address

The Three Affiliated Tribes Law Enforcement Services or an authorized designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's residence and/ or termination of residence:

a The address of each residence at which the sex offender resides or will reside; and
b Any location or description that identifies where the sex offender habitually resides regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address.

3-22-13.15 School

The Three Affiliated Tribes Law Enforcement Services or an authorized designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's school:

a The address of each school where the sex offender is or will be a student;
b The name of each school the sex offender is or will be a student.

3-22-13.16 Social Security Number

The Three Affiliated Tribes Law Enforcement Services or an authorized designee shall obtain, and a covered sex offender shall provide, the following information:

a A valid social security number for the sex offender; and
b Any social security number the sex offender has used in the past, valid or otherwise.

3-22-13.17 Temporary Lodging Information

The Three Affiliated Tribes Law Enforcement Services or an authorized designee shall obtain, and a covered sex offender shall provide, the following information when the sex offender will be absent from his residence for seven (7) days or more:

a Identifying information of the temporary lodging locations including addresses and names; and
b The dates the sex offender will be staying at each temporary lodging location;
c The registered sex offender shall provide the information in subsections (a)-(b) above no later than three (3) days before his scheduled travel. The information shall be provided in person;

d Travel Abroad - In the event the sex offender will be traveling outside of the United States for more than seven (7) days, the Three Affiliated Tribes Law Enforcement or an authorized designee shall immediately provide this information to INTERPOL.

3-22-14 International Travel

3-22-14.1 Sex offenders must inform their residence jurisdiction twenty-one (21) days in advance if they intend to travel outside the United States, and the jurisdiction so informed must notify the U.S. Marshals Service and update the sex offender's registration information in the national databases. Once so notified, the Three Affiliated Tribes Law Enforcement Services an authorized designee shall immediately:

a Notify any other jurisdiction where the sex offender is either registered, or is required to register, of that updated information;
b Notify the U.S. Marshal Service; and
c Update NCIC.

3-22-15 Offense Information

3-22-15.1 The Three Affiliated Tribes Law Enforcement Services or an authorized designee shall obtain the text of each provision of law defining the criminal offense(s) for which the sex offender is registered.

3-22-16 Vehicle Information

3-22-16.1 The Three Affiliated Tribes Law Enforcement Services or an authorized designee shall obtain, and a covered sex offender shall provide, the following information related to all vehicles owned or operated by the sex offender for work or personal use including land vehicles, aircraft, and watercraft:

a License plate numbers;
b Registration number of identifiers;
c General description of the vehicle to include color, make, model, and year; and
d Any permanent or frequent location where any covered vehicle is kept.

3-22-17 Public Offender Registry Website

3-22-17.1 Website

The Three Affiliated Tribes Law Enforcement Services shall create, use, and maintain a public sex offender registry website in accordance with the following:

a The registry website shall include links to sex offender safety and education resources;
b The registry website shall include instructions on how a person can seek correction of information that the individual contends is erroneous;
c The registry website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties;
d The registry website shall have the capability of conducting searches by:
(i) Name;
(ii) Country, city, and/or town;
(iii) Zip code and/or geographic radius; and
e The website shall include in the design of its website all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General of the United States.

3-22-18 Required and Prohibited Information

3-22-18.1 The following information shall be made available to the public on the sex offender registry website:

a Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded;
b All sex offenses for which the sex offender has been convicted;
c The sex offense(s) for which the offender is currently registered;
d The address of the sex offender's employer(s);
e The name of the sex offender including all aliases;
f A current photograph of the sex offender;
g A physical description of the sex offender;
h The residential address and, if relevant, a description of a habitual residence of the sex offender;
i All addresses of schools attended by the sex offender; and
j The sex offender's vehicle license plate number along with a description of the vehicle.

3-22-18.2 Prohibited Information

The following information shall not be available to the public on the sex offender registry website:

a Any arrest that did not result in conviction;
b The sex offender's social security number;
c Any travel and immigration documents;
d The identity of the victim; and
e Internet identifiers (as defined in 34 U.S.C. § 20916(e)(2)).

3-22-18.3 Witness Protection

For sex offenders who are under a witness protection program, the Three Affiliated Tribes may honor the request of the United States Marshals Service or other agency responsible for witness protection by not including the original identity of the offender on the publicly accessible sex offender registry website.

The sex offender must review the information for accuracy.

3-22-19 Community Notification

3-22-19.1 When a sex offender registers or updates his or her information with the Tribe, the Three Affiliated Tribes Law Enforcement Services shall:

a Immediately notify the FBI or other federal agency as designated by the Attorney General in order that the information may be updated on NSOR or other relevant databases;
b Immediately notify any agency, department, or program within the Tribe that is responsible for criminal investigation, prosecution, child welfare or sex offender supervision functions; including but not limited to, police, whether BIA, Tribal or FBI, Tribal prosecutors, and Tribal probation;
c Immediately notify any and all other registration jurisdictions where the sex offender is registered due to the sex offender's residency, school attendance, or employment; and;
d Immediately notify National Child Protection Act agencies, which includes any agency responsible for conducting employment related background checks under the National Child Protection Act of 1993 (42 U.S.C. 5119(a)) when a sex offender registers or updates registration.

3-22-19.2 Community Notification

The Three Affiliated Tribes Law Enforcement services shall ensure there is an automated community notification process in place that ensures the following:

a Upon a sex offender's registration or update of information with the Tribe, the Tribe's public sex offender registry website is immediately updated within three (3) days.

b The Tribe's public sex offender registry has a function that enables the general public to request an e-mail notice that will notify them when a sex offender commences residence, employment, or school attendance with the Tribe, within a specified zip code, or within a certain geographic radius. This email notice shall include the sex offender's identity so that the public can access the public registry for the current information.

3-22-20 Crimes and Civil Sanctions

3-22-20.1 Criminal Penalty

Each violation of any provision of this chapter by a sex offender may be considered a crime and subject to a period of incarceration for up to three (3) years.

3-22-20.2 Non-Indian Criminal Penalty

Each violation of a provision of this chapter by a sex offender who is a non-Indian shall be considered a criminal violation subject to the covered crimes for protection of children and domestic violence victims as provided in Chapter 24 of this title. Enforcement of sex offenses not qualifying under Chapter 24 of this title may be subject to federal law prosecution.

3-22-20.3 A person is guilty of a Class 1 Misdemeanor if he knowingly:

a Harbors or attempts to harbor, or assist another person in harboring or attempting to harbor a sex offender who is in violation of this chapter;

b Assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this chapter; or

c Provides information to a law enforcement agency regarding a sex offender which the person knows to be false.

3-22-21 Immunity

3-22-21.1 Nothing under this chapter should be construed as a waiver of sovereign immunity for the Three Affiliated Tribes, their departments, agencies, employees, or agents.

Any person acting under good faith of this chapter shall be immune from any civil liability arising out of such actions.

3-23 Pow Wow Control Ordinance

3-23-1 Definitions

3-23-1.1 In this chapter, unless a different meaning plainly is required:

a "Tribe" means The Three Affiliated Tribes or Mandan Hidatsa Arikara Nation.

b "Person" includes all men, women, and children.

c "Pow-Wow" means any duly authorized pow-pow so recognized by the Three Affiliated Tribes.

d "Pow-Wow areas" means that area so described in the pow-wow permit duly issued by the Tribal Business Council of the Three Affiliated Tribes.

e "Pow-Wow permit" shall include location, date, and time of the pow-wow. The permit must also include addresses with names and titles of the committee members.

f "Firearms" means any explosive device capable of releasing a projectile propelled by either gas, air, explosive force, spring action, or commonly accepted as a firearm.

g "Drugs" means any offense listed provided in Chapter 3-25, Drug Code of the Three Affiliated Tribes, inclusive of drug paraphernalia.

3-23-2 Legislative Intent

3-23-2.1 It is the purpose of this ordinance to maintain a peaceful and healthy atmosphere in order to perpetuate the heritage and culture of our people. It is a further purpose of this ordinance to make the persons and property on our pow-wow grounds safe, healthy, and secure.

3-23-3 Prohibitions

3-23-3.1 Alcoholic Beverage and Drugs

It shall be unlawful for any person to enter upon the designated pow-wow area with any alcoholic beverages or drugs. It shall be unlawful for any person to consume, own, possess, furnish, or deliver alcoholic beverages or drugs to any other person in the duly designated pow-wow area.

3-23-3.2 Firearms and Fireworks

It shall be unlawful for any person to enter upon the designated pow-wow area with any firearms or fireworks except those specifically permitted by the pow-wow committee for ceremonial purposes or those carried by law enforcement personnel. It shall be unlawful for any person to own, possess, or furnish to any other person a firearm in the duly designated pow-wow area, except those permitted by the pow-wow committee for ceremonial purposes or law enforcement.

a It shall be unlawful for any person to discharge any firearms or fireworks upon the pow-wow area, except for recognized ceremonial purposes so designated by the specific pow-wow committee.

3-23-4 Penalties

a Alcohol – Confiscation of the alcohol, up to thirty (30) days imprisonment, and/or one hundred dollar ($100) fine.

b Firearms – Confiscation of the firearm, up to ninety (90) days imprisonment, and/or seven hundred fifty dollar ($750) fine.

c Fireworks – Confiscation of the fireworks, up to fifteen (15) days imprisonment and/or fifty dollar ($50) fine; and

d Drugs – Confiscation of illegal drugs, up to ninety (90) days imprisonment, and/or seven hundred fifty ($750) dollars fine.

3-23-5 Confiscation

After trial, the trial judge may order any confiscated goods destroyed or sold at a public sale to the highest bidder, the proceeds of which shall be applied to the benefit of the Tribe.

3-23-6 Notice

The contents of this Ordinance shall be duly posted at all entrances to the pow-wow area and in such other conspicuous areas so that the general public shall read.

3-23-7 Enforcement

This Ordinance shall be enforced by the duly designated law enforcement officials in a safe and prudent manner, and it is not a license on their part to enter a tent or other structures on the pow-wow area unless illegal conduct is so noticed, in plain view by the designated law enforcement officials.

3-24 Domestic Violence and Covered Crimes

3-24-1 Special Tribal Criminal Jurisdiction

3-24-1.1 The Three Affiliated Tribes does hereby enact and exercise "Special Tribal Criminal Jurisdiction" as a participating tribe, as defined in 25 U.S.C. §1304 (VAWA 2022), subject to applicable exceptions defined therein and as may be subsequently amended.

3-24-1.2 In all proceedings in which the Tribal court is exercising Special Tribal Criminal Jurisdiction as a participating tribe, all rights established by the Three Affiliated Tribes Title III, Criminal Code shall apply and those enumerated in the Indian Civil Rights Act, 25 U.S.C. §1302 to all defendants. Should there be any inconsistency between the Three Affiliated Tribes Criminal Code Title III, and 25 U.S.C §1302, those of 25 U.S.C §1302 shall apply.

3-24-2 Purpose

3-24-2.1 The purpose of this chapter is to recognize domestic violence is a serious crime against the society, the Tribe, and the family, and to provide the victim of domestic abuse or family violence and other covered crimes the maximum protection from further violence that the law, and those who enforce the law, can provide. Furthermore, the purpose of this chapter is to recognize that the strength of the Tribe is founded on healthy families, and that the safety of victims of domestic violence and other covered crimes, especially children, must be ensured by immediate intervention of law enforcement, prosecution, education, treatment, and other appropriate services.

3-24-3 Definitions

3-24-3.1 The following definitions shall apply to this chapter:

a "Assault of Tribal Justice Personnel" means any violation of the criminal law of the Three Affiliated Tribes where the violation involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of, the Three Affiliated Tribes or serving the Three Affiliated Tribes during, or because of, the performance or duties of that individual in:

(i) Preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime;

(ii) Adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime;

(iii) Detaining, providing supervision for, or providing services for persons charged with a covered crime; or

(iv) Incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime.

b "Child" means a person who has not attained the lesser of:

(i) The age of eighteen (18) years; and

(ii) Except in the case of sexual abuse, the age specified by the criminal law of the Three Affiliated Tribes.

c "Child Violence" means the use, threatened use, or attempted use of violence against a child proscribed by the criminal laws of the Three Affiliated Tribes.

d "Coercion" means:

(i) Threats of serious harm to or physical restraint against any person;

(ii) Any scheme, plan, or pattern intended to cause a person to believe failure to perform an act would result in serious harm to or physical restraint against any person; or

(iii) The abuse or threatened abuse of law or legal process.

e "Commercial Sex Act" means any sex act as defined in subsection 3-11-1.1(g), for which anything of value is given or received by a person.

f "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Course of conduct includes, in addition, all forms of communication, contact, conduct, or the sending of electronic communications. Constitutionally protected activity is not included within the meaning of course of conduct.

g "Covered Crimes" mean
(i) Assault of tribal justice personnel;
(ii) Child violence;
(iii) Dating violence;
(iv) Domestic violence;
(v) Obstruction of justice;
(vi) Sexual violence;
(vii) Sex trafficking;
(viii) Stalking;
(ix) Violation of a protection order.

h "Dating Violence" means any violation of the criminal law within the jurisdiction of the Three Affiliated Tribes that is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

i "Domestic Violence" means any violation of the criminal law provided at section 3-24-8 of this chapter which is committed within the jurisdiction of the Three Affiliated Tribes by:
(i) A current or former spouse or intimate partner of the victim;
(ii) A person with whom the victim shares a child in common;
(iii) A person who is cohabitating with or who has cohabited with the victim as a spouse or intimate partner;
(iv) A person similarly situated to a spouse, parent, child, or guardian of the victim; or
(v) A person who is cohabitating with or who has cohabitated with the victim as a parent, child, or guardian.

j "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at a person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

k "Harass" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of his or her child.

l "Immediate family member" means a spouse, child (including by adoption), parent, sibling, domestic or service animals or any other person who regularly resides in the household with the victim and is related by blood or marriage.

m "Obstruction of Justice" means any violation of the criminal laws in the jurisdiction of the Three Affiliated Tribes which involves interfering with the administration or due process of the laws of the Three Affiliated Tribes, including any Tribal criminal

proceeding. For purposes of the Special Tribal Criminal Jurisdiction enforcement, the following non-exhaustive list of crimes shall constitute obstruction of justice:

(i) Perjury – section 3-17-2;
(ii) False Swearing – section 3-17-3
(iii) Unsworn Falsification to Authorities – section 3-17-4
(iv) False Reports to Law Enforcement Authorities – section 3-17-6
(v) Tampering with Witnesses and Informants – section 3-17-7
(vi) Tampering with Jurors and Court Officers – section 3-17-8
(vii) Tampering with or Fabricating Physical Evidence – section 3-17-9
(viii) Obstructing Administration of Law-Contempt of Court - section 3-18-2 and
(ix) Hindering Apprehension or Prosecution – section 3-18-4

n "Participating tribe" means an Indian tribe that elects to exercise Special Tribal Criminal Jurisdiction over the jurisdiction of that Indian tribe.

o "Protection Order" means:

(i) Any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and
(ii) Includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendente lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

p "Repeatedly" means a pattern of conduct consisting of two or more acts evidencing continuity of purpose. The term does not include constitutionally protected activity.

q "Sex Trafficking" means conduct as described at § 3-21-1.1(n) and conduct within the meaning of U.S.C. Title 18, § 1591(a), and includes any amendments which may be added therein.

r "Sexual Violence" means any nonconsensual act or contact proscribed by the criminal law of the Three Affiliated Tribes including any case in which the victim lacks the capacity to consent to the act.

s "Special Tribal Criminal Jurisdiction" means the criminal jurisdiction that the Three Affiliated Tribes as a participating tribe may exercise under this chapter.

t "Spouse or Intimate Partner" means:

(i) A spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or
(ii) A person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the person involved in the relationship; or
(iii) A spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or
(iv) A person who is or has been in a social relationship of a romantic or intimate nature with the target of the stalking, as determined by the length of the relationship, and the frequency of interaction between the person involved in the relationship; and
(v) Any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.

u "Stalking" means engaging in a course of conduct directed at a specific person proscribed by the criminal law of the Three Affiliated Tribes where the violation which occurs would cause a reasonable person:
(i) To fear for that person's safety or the safety of others; or
(ii) To suffer substantial emotional distress.

v "Violation of a Protection Order" means an act that:
(i) Prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, the named protected person;
(ii) Was issued against the defendant;
(iii) Is enforceable by the Three Affiliated Tribes' Tribal Court; and
(iv) It affords full faith and credit to protection orders issued by another tribe, State or Territory and conforms to the due process rights consistent with Federal Criminal Code, Title 18 § 2265(b).

3-24-4 General Jurisdiction

3-24-4.1 Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by 25 U.S.C. § 1301 and § 1303, the powers of self-government, include the inherent power of the Three Affiliated Tribes, which is hereby recognized and affirmed, to exercise Special Tribal Criminal Jurisdiction over all persons.

a The exercise of Special Tribal Criminal Jurisdiction by Three Affiliated Tribes shall be concurrent with the jurisdiction of the United States, a State, or both when applicable.

b Nothing within this section:
(i) Creates or eliminates any federal or state jurisdiction over Indian Country as provided by applicable law; or
(ii) Affects the authority of the United States or any state government that has been delegated authority by the United States to investigate and prosecute a criminal violation in Indian Country.

c The Three Affiliated Tribes may exercise Special Tribal Criminal Jurisdiction over a non-Indian defendant for domestic or dating violence, stalking, and any covered crime which occurs within the jurisdiction of the Three Affiliated Tribes.

d Exception if victim and defendant are both non-Indians:
(i) The Three Affiliated Tribes may not exercise Special Tribal Criminal Jurisdiction over an alleged offense, other than Obstruction of Justice or Assault of Tribal Justice Personnel, if neither the defendant nor the alleged victim is an Indian.
(ii) In this section and with respect to a criminal proceeding in which Three Affiliated Tribes exercises Special Tribal Criminal Jurisdiction based on a violation of a protection order, the term "victim" means a person specifically protected by a protection order that the defendant allegedly violated.

3-24-5 Rights of Defendants

3-24-5.1 In all criminal proceedings in which the Three Affiliated Tribes exercises Special Tribal Criminal Jurisdiction over a defendant, the Three Affiliated Tribes shall provide the defendant:

a The right to a trial by an impartial jury that is drawn from sources that:
(i) Reflect a fair cross section of the community; and
(ii) Does not systematically exclude any distinctive group in the community, including non-Indians;

b The right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution;

c At the expense of the Three Affiliated Tribes, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction of the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

d Requires that the judge presiding over the criminal proceedings;
(i) Has sufficient legal training to preside over criminal proceedings; and
(ii) Is licensed to practice law by any jurisdiction in the United States.

e Prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the Three Affiliated Tribes; and

f Maintain a record of the criminal proceedings, including an audio or other recording of the trial proceedings.

3-24-6 Petitions to Stay Detention

3-24-6.1 A person who has filed a petition for a writ of habeas corpus in the MHA Nation Supreme Court to test the legality of his or her detention by order of the Fort Berthold District Court and may petition the MHA Nation Supreme Court to stay further detention pending the habeas proceeding.

3-24-6.2 The MHA Nation Supreme Court shall grant a stay described in section 3-24-6.1 if the court:

a Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

b After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

3-24-7 Petitions for Writs of Habeas Corpus

3-24-7.1 After a defendant has been sentenced by the Fort Berthold District Court, the defendant may file for a writ of habeas corpus in the MHA Nation Supreme Court.

3-24-7.2 An application for a writ of habeas corpus on behalf of a person in custody pursuant to an order of the Fort Berthold District Court shall not be granted unless:

a The applicant has exhausted all the remedies available in the Fort Berthold District Court;

b There is an absence of an available Fort Berthold District Court corrective process; or

c Circumstances exist that render the Fort Berthold District Court corrective process ineffective to protect the rights of the applicant.

3-24-7.3 When a person is ordered to detention by the Fort Berthold District Court, the court has a duty to immediately notify in writing such person of their rights and privileges under this section.

3-24-8 Crime of Domestic Violence

3-24-8.1 Any person is guilty of the offense of domestic violence if that person purposely or knowingly causes physical harm, bodily injury, sexual activity compelled by physical force or mental duress, assault, the infliction of fear of imminent physical harm or bodily injury, or assault, not committed in self-defense, if the actor is an individual identified in subsection 3-24-3.1(i).

3-24-8.2 Any person convicted of domestic violence shall be sentenced as follows:

a A first conviction shall be a Class 3 Misdemeanor;

b A second conviction shall be a Class 1 Misdemeanor; and

c A third or subsequent conviction shall be a Felony;

d An offender convicted of domestic violence, regardless of how many prior convictions the offender has, under this chapter, is required to undertake a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency. The offender must complete any treatment as determined by the outcome of the assessment. A copy of the incident report may be sent to the domestic violence counseling provider to assist in accurately assessing the offender's need for counseling and treatment. Counseling providers shall take all required precautions to safeguard confidentiality of the report. If the report contains information on victim's location and contact information (telephone, email, etc.), this information must be redacted prior to the report being sent to the domestic violence counseling provider.

3-24-9 Crime of Dating Violence

3-24-9.1 Any person is guilty of the offense of dating violence if that person purposely or knowingly causes physical harm, bodily injury, sexual activity compelled by physical force or mental duress, assault, the infliction of fear of imminent physical harm or bodily injury, or assault, not committed in self-defense, if the actor is an individual identified in subsection 3-24-3.1(t)(ii).

3-24-9.2 Any person convicted of Dating Violence shall be sentenced as follows:

a A first conviction shall be a Class 3 Misdemeanor;

b A second conviction shall be a Class 1 Misdemeanor; and

c A third or subsequent conviction shall be a Felony;

d An offender convicted of Dating Violence, regardless of how many prior convictions the offender has under this chapter, is required to undertake a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency. The offender must complete any treatment as determined by the outcome of the assessment. A copy of the incident report may be sent to the domestic violence counseling provider to assist in accurately assessing the offender's need for counseling and treatment. Counseling providers shall take all required precautions to safeguard confidentiality of the report. If the report contains information on victim's location and contact information (telephone, email, etc.), this information must be redacted prior to the report being sent to the domestic violence counseling provider.

3-24-10 Stalking

3-24-10.1 A person commits the crime of stalking if, without law authority:

a The actor engages in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person and which serves no legitimate purpose. The course of conduct may be directed toward that individual person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment; or

b The unauthorized tracking of the person's movements or location through the use of global positioning system or other electronic means that would cause a reasonable person to be frightened, intimidated, or harassed and serves no legitimate purpose; and

c The person being harassed or followed is placed in fear that the stalker intends to injure the person or an immediate family member. The feeling of fear must be one that a reasonable person in the same situation would experience under all circumstances.

3-24-10.2 Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitute prima facie evidence that the stalker intends to frighten, intimidate, or harass the person. Contact includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.

3-24-10.3 For purposes of this section, "immediate family member" has the meaning provided in subsection 3-24-3.1(l).

3-24-11 Defenses

3-24-11.1 In any prosecution under section 3-24-10, it is not a defense to the crime of stalking:

a That the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; or

b That the stalker did not intend to frighten, intimidate, or harass the person.

3-24-11.2 It shall be a defense to the crime of stalking that the defendant is a licensed investigator or a law enforcement officer acting within his or her official capacity.

3-24-11.3 If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the protected activity.

3-24-12 Classification for Penalty for Stalking

3-24-12.1 Except as provided in subsection 3-24-12.2 below, a person who has been convicted of the crime of stalking another person is guilty of a Class 3 Misdemeanor.

3-24-12.2 A person who stalks another is guilty of a Class 1 Misdemeanor if any of the following apply:

a The stalker has previously been convicted by the Three Affiliated Tribes, any other tribe, or a state of any crime involving domestic violence as defined in section 3-24-8 or a crime having similar elements against the same victim or members of the victim's family or household;

b The stalker violates any protective order protecting the person being stalked;

c The stalker has previously been convicted of stalking another person;

d The stalker was armed with a dangerous weapon as defined in subsection 3-20-1.1(a) while stalking the victim; or

e The stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker targets the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

3-24-12.3 If the court determines that a person convicted of the offense of stalking under this section owns or possesses a firearm which was used in the commission of the stalking offense, the court may order the firearm be summarily forfeited and disposed of in accordance with the policy of the Three Affiliated Tribes Law Enforcement Services.

3-24-13 Violation of a Domestic Violence Protection Order

3-24-13.1 A person commits the offense of violation of a domestic violence protection order, if the actor knowingly violates any provision of a domestic violence protection order issued pursuant to sections 3-24-14, 3-24-15, or recognized under section 3-24-16, of this chapter, and shall be sentenced as follows:

a A first or second conviction for violation of a domestic violence protection order, whether, ex parte, temporary, or permanent in nature, is a Class 1 Misdemeanor; and

b A conviction for a third or subsequent offense of violation of a domestic violence protection order is punishable as a Felony offense.

3-24-14 Domestic Violence Protection Order

3-24-14.1 An action for a protection order is commenced by a verified application alleging the existence of domestic violence which may be brought in Three Affiliated Tribal Court by any person if the court determines that the relationship between that person and the alleged offender (respondent) is sufficient to warrant the issuance of a domestic violence protection order. An action may be brought under this section, regardless of whether a divorce action has been filed.

3-24-14.2 An application may be on a form provided by the court or in other form, but must at a minimum identify the respondent, allege that the applicant (petitioner) is in danger of abuse from the respondent and has been the victim of abuse committed by the respondent, and particularly describing the nature of the abuse and the dates of occurrence.

3-24-14.3 Upon receipt of the application, the court shall order a hearing to be held no later than fourteen (14) days from the date the application was filed unless extended pursuant to subsection 3-24-14.4 below.

3-24-14.4 Service shall be made upon the respondent not less than seven (7) days prior to the hearing. If service cannot be made, the court may set a new date. Proof of service shall be filed with the court after service is made and prior to the scheduled date of the hearing.

3-24-14.5 At any hearing regarding the issuance of a domestic violence protection order, every respondent has the right to be represented by an attorney at their own expense.

3-24-14.6 Upon the showing of actual or imminent domestic violence, the court may issue a domestic violence protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:

a Restraining any party from having contact or communication, directly or indirectly (including by phone, mail, email, text messages, in person or through a third party) with the petitioner, the petitioner's children, or the petitioner's spouse or intimate partner;

b Prohibiting the respondent from being within a specified distance from the petitioner, the petitioner's children, or the petitioner's spouse or intimate partner;

c Restraining any party from threatening, molesting, injuring, or harassing any other person;

d Excluding and/or prohibiting the respondent from a specified household, from the residence of another person against whom the domestic violence is occurring or from a domestic violence care facility, where the exclusion is necessary to the physical or mental well-being of the petitioner or others;

e Prohibiting the respondent from entering the petitioner's residence, school, business, or place of employment, or the children's school or daycare;

f Awarding temporary custody and/or establishing temporary visitation rights and/or temporary child support with regard to children. The court may order that any such visitation may be supervised or otherwise restricted. In the event the court orders temporary child support, the court shall notify the Three Affiliated Tribes Child Support Enforcement Agency to assist in determining the amount of child support owed pursuant to the relevant guidelines of the Three Affiliated Tribes;

g Recommending or requiring counseling with a domestic violence program or other agency that provides such counseling services which the court deems appropriate. The court may request a report from the relevant designated agency within a time period established by the court;

h Awarding temporary use of personal property, including motor vehicles, to either party;

i Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in subsection 3-20-1.1(a), in the respondent's immediate possession or control or subject to the respondent's immediate control for the duration of the Domestic Violence Protection Order. The respondent shall surrender the firearm or other dangerous weapon to the Three Affiliated Tribes Chief of Police. If the firearm or other dangerous weapon is not surrendered, law enforcement may arrest the respondent pursuant to section 3-24-13 of this chapter and take possession of the firearm or other dangerous weapon. The respondent must be informed that a violation of this firearms possession may subject the respondent to federal prosecution under Title 18, U.S.C. § 922(g)(8); and

j Any other order the court deems necessary or appropriate to ensure the safety of the petitioner, petitioner's children, or petitioner's spouse or intimate partner.

3-24-14.7 All protection orders issued by the Court shall be entered and maintained in the national database by law enforcement. Service of all protection orders shall be made upon the Respondent by law enforcement.

3-24-15 Temporary Ex Parte Protection Order

3-24-15.1 Where an application under section 3-24-14 alleges an immediate and present danger of domestic violence to the applicant (petitioner) based upon an allegation of a recent incident of domestic violence or threat of domestic violence, the court, upon finding by a preponderance of the evidence that a petitioner is in immediate danger of domestic violence, may grant an ex parte temporary protection order, pending a full hearing, granting such relief as the court deems proper.

3-24-15.2 An ex parte temporary protection order may include any relief within the court's authority to provide under subsection 3-24-14.6.

3-24-15.3 An ex parte temporary protection order shall remain in effect, at the court's discretion, for not more than thirty (30) days, unless otherwise terminated or amended by the court.

3-24-15.4 A full hearing as provided by section 3-24-14 shall be arranged not later than fourteen (14) days from the issuance of the temporary order. The respondent shall be served by law enforcement forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for hearing. If service cannot personally be made on the respondent within seven (7) days of issuance of an ex parte order, law enforcement shall mail a copy of the order, return receipt requested, to the last known address of the respondent. Proof of service shall be filed with the court.

3-24-15.5 The clerk of court shall transmit a copy of each temporary protection order, or extension, modification, or termination thereof, by the close of the business day in which the order was granted, to the law enforcement agency with jurisdiction over the residence of the petitioner or over the residence at which the actual domestic violence, which is the subject of the temporary protection order, has occurred, or is likely to occur if requested by the petitioner and approved by the court.

3-24-15.6 No filing fee shall be required for any individual petitioning for a temporary ex parte restraining order under this section.

3-24-16 Domestication, Recognition and Enforcement of Foreign Protection Orders

3-24-16.1 Pursuant to U.S.C., Title 18, § 2265, a domestic violence protection order issued by a court of competent jurisdiction shall be accorded full faith and credit by the Three Affiliated Tribes Tribal Court and enforced by the Three Affiliated Tribes Law Enforcement Services, provided that the foreign court which issued the protection order:

a Had jurisdiction over the parties and the matter; and

b Reasonable notice and opportunity to be heard was given to the person against whom the protection order is sought, sufficient to protect that person's due process rights to the extent required under U.S.C., Title 18, § 2265.

3-24-16.2 Ex parte foreign protection orders are not eligible for enforcement under this section unless notice and opportunity to be heard had been provided within the time required by the foreign jurisdiction's law, and in any event within a reasonable time after the protection order was issued, sufficient to protect that person's due process rights.

3-24-16.3 A foreign protection order issued by a state or tribal court against one who has petitioned, filed a complaint, (cross or counter petitioned) or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit recognition if:

a No cross or counter petition, complaint, or other written pleading was filed seeking such protection order; or

b A cross or counter petition has been filed and the foreign court did not make specific findings that each party was entitled to such an order.

3-24-16.4 Neither residence on the Fort Berthold Indian Reservation nor registration of the foreign protection order shall be required for enforcement of the protection order by local law enforcement, and the failure to register shall not be an impediment to its enforcement.

3-24-16.5 The following domestication procedure shall be available to protected persons who hold protection orders from a court of a foreign jurisdiction:

a A protected person shall file a certified copy of the foreign protection order with the court. However, nothing in this section shall operate to preclude the enforcement of any foreign protection order determined by the law enforcement officer to be valid even if the protected person does not have a certified copy of the foreign protection order filed with the court.

b At the hearing to recognize the foreign protection order, the protected person must swear by affidavit, that to the best of the protected person's knowledge and belief, that the attached certified copy of the foreign protection order is currently in effect as written and has not been superseded by any other order and the respondent has been provided a copy of the protection order.

c After the court issues an order of recognition of the foreign protection order, the court shall provide the local law enforcement a copy of the certified copy of the foreign protection order and law enforcement shall enter the foreign protection order into the internal register, noting that it is a valid foreign protection order subject to enforcement in the Three Affiliated Tribes jurisdiction.

d The court shall not notify or require notification to the party against whom the foreign protection order has been issued that the foreign protection order has been registered or filed in the Three Affiliated Tribes jurisdiction unless requested to do so by the protected party.

e Neither the court nor the law enforcement agency shall make available publicly on the internet any information regarding the registration, filing of a petition for, or issuance

of protection order, restraining order, or injunction in either the issuing jurisdiction or the enforcing jurisdiction, if such publication would be to publicly reveal the identity or location of the party protected under such order. The Three Affiliated Tribes Tribal Court and Law Enforcement Services may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

f For purposes of this section, the court shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land within the exterior boundaries of the Fort Berthold Indian Reservation, and to use other appropriate mechanisms, in matters arising anywhere within the jurisdiction of the Three Affiliated Tribes or otherwise within the full authority of the Three Affiliated Tribes.

3-24-16.6 Law enforcement officers shall enforce foreign protection orders as if they were entered by the Three Affiliated Tribes Tribal Court. Upon presentation of a foreign protection order by a protected person, a law enforcement officer shall assist in enforcement of all its terms, as written in the foreign protection order.

3-24-17 Mandatory Arrest

3-24-17.1 If a law enforcement officer has probable cause to believe a person has either committed an offense of domestic violence or violated a domestic violence protection order pursuant to this chapter, whether the offense or violation was committed within or outside the presence of the officer, the law enforcement officer shall arrest and take into custody the alleged offender. An arrest under this section should be made as soon as possible after probable cause has been formed in order to ensure the safety of the victim.

3-24-17.2 When a law enforcement officer receives a complaint of domestic violence from two (2) opposing persons that have assaulted each other, the officer shall at a minimum arrest the person believed to have been the primary aggressor. In making this determination, and in determining whether the non-primary aggressor should also be arrested, the officer shall make every reasonable effort to consider:

a The comparative extent of the injuries inflicted;

b If threats or intimidation tactics were used, including consideration of who made the threats creating fear of bodily injury;

c The history of domestic abuse between the persons involved or prior complaints from the same residence, considering who made them and what was alleged;

d The likelihood of future injury to each person; and

e Whether one person was acting in self-defense.

3-24-17.3 A law enforcement officer shall always use professional methods. An officer shall not base an arrest decision solely on the request of a victim to do so or on the officer's perception of the willingness of a victim or witness to testify or otherwise participate in a judicial proceeding. When an officer has probable cause to make an arrest under this chapter, the officer shall make such an arrest regardless of the victim's contrary declarations, however, those declarations should be noted in the officer's report.

3-24-17.4 Whenever a law enforcement officer is called to the scene of a reported incident of domestic violence, or otherwise receives information that an incident of domestic violence has occurred, and either does not make an arrest or arrests more than one (1) person for domestic violence in

connection with the same incident, the officer shall file a written report with his supervisor, setting forth the reason or reasons for the decision to arrest or not arrest.

3-24-17.5 Incident to arrest under this chapter, a law enforcement officer shall seize any and all weapons alleged to have been involved in the crime, or which are in plain view of the officer or discovered pursuant to a legal search, including a search conducted pursuant to a warrant, a safety pat-down search, or consensual search, or a search incident to arrest.

3-24-18 Mandatory Hold

3-24-18.1 Any person arrested under this chapter shall be held without bail, in the custody of the police department, for a period not to exceed seventy-two (72) hours as a mandatory "cooling off" period.

3-24-19 Bail

3-24-19.1 When a person arrested for domestic violence is subsequently released, in any bail conditions set by the court, regardless of whether a domestic violence protection order has been petitioned for by the victim, and unless extraordinary circumstances require otherwise, the court shall issue a no-contact order between the parties. The protected party, law enforcement, and the defendant shall be provided a certified copy of any no-contact order issued under this section. A no-contact order may not be vacated without notice to the protected party and the tribal prosecutor with a hearing on the need to vacate the no-contact order.

3-24-19.2 Any person released on bail under this chapter, whose release is revoked for violation of a bond condition prohibiting or restricting contact with the victim, shall thereafter not be entitled to pre-trial release under any conditions. A violation of any such condition may be treated separately and independently from any other potential charge for violation of an order issued under this chapter.

3-24-20 Filing of Complaint

3-24-20.1 The law enforcement officer making an arrest under this chapter shall sign a complaint against the alleged offender on behalf of the Three Affiliated Tribes.

3-24-20.2 The complaint along with the arrest report inclusive of any statements of the victim and names of witnesses shall be provided to the tribal prosecutor who shall determine if sufficient evidence is available to pursue prosecution.

3-24-20.3 The tribal prosecutor may file a complaint for violation of any offense listed under this chapter upon receipt of an affidavit or statement from the victim of the offense.

3-24-21 Victim's Rights

3-24-21.1 To the greatest extent possible, pursuant to the Three Affiliated Tribes Tribal Code and the Tribal Court procedures, a victim of an offense charged under this chapter has the following rights:

a To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process;

b To be informed when the accused or convicted person is released from custody or has escaped;

c To be present at and to be informed of all criminal proceedings where the defendant has the right to be present;

d To be heard at any proceeding involving a post-arrest release decision, negotiated plea bargaining agreement, or sentencing;

e To refuse a pretrial interview or deposition request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant;

f To confer with the prosecution, upon request, before or after the charge against the defendant is filed, before trial or before any disposition of the case and to be informed of the disposition;

g To read police reports related to the crime involving the victim when they are available;

h To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury;

i To be heard, upon request, at any proceeding when any post-conviction release from confinement is being considered;

j To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence;

k To have rules of criminal procedure and rules of evidence that protect victims' rights and that are subject to Tribal Business Council amendment; and

l To be informed of victims' rights.

m The rights that are established by and enumerated in this chapter arise on the arrest or formal charging of the person or persons who is alleged to be responsible for a criminal offense against a victim. The rights and duties continue to be enforceable pursuant to these charges, all post-conviction release and relief proceedings, and the discharge of all criminal proceedings relating to restitution. If a defendant is ordered to pay restitution to a victim, the rights and duties continue to be enforceable until restitution is paid or a criminal restitution is ordered or entered in favor of the victim.

n If a defendant's conviction is reversed and the case is returned to the trial court for further proceedings, the victim has the same rights that were applicable to the criminal proceedings that led to the appeal or other post-conviction relief proceedings.

o After the final termination of a criminal prosecution by dismissal with prejudice or acquittal, a person who has received notice and the right to be present and heard pursuant to the victims' rights stated in this chapter is no longer entitled to such rights.

p It is at the victim's discretion to exercise his/her rights to be present and heard at the court proceedings, and the absence of the victim does not preclude the court from proceeding with the hearing or trial.

q A victim's right to be heard may be exercised, at the victim's discretion, through an oral statement or submission of a written statement.

r Upon the request of the victim and after consultation with the prosecutor, law enforcement shall return to the victim any property belonging to the victim that was taken during the course of the investigation or shall inform the victim of the reasons why the property will not be returned. Law enforcement shall make reasonable efforts to return the property to the victim as soon as possible. If the victim's property has been admitted as evidence during a trial or hearing, the court may order its release to the victim if a photograph can be substituted. If evidence is released pursuant to this subsection, the defendant or the defendant's attorney or investigator may inspect and independently photograph the evidence before it is released.

s A victim advocate shall not disclose as a witness or otherwise disclose any communication, except compensation or restitution information, between himself and the victim, unless the victim consents in writing to the disclosure.

t Communication between a victim and victim advocate is not privileged if the victim advocate knows that the victim will give or has given perjured testimony or if the communication contains exculpatory material. The victim advocate must disclose such information to the prosecutor.

u Before, during and immediately after any court proceedings, the court shall provide appropriate safeguards to ensure the safety and comfort of the victim and all parties involved.

v Unless the victim consents, the victim shall not be compelled to submit to a pre-trial interview that is conducted by the defendant, the defendant's attorney, or an agent of the defendant.

(i) The defendant, the defendant's attorney or an agent of the defendant shall only initiate contact with the victim through the prosecutor's office. The prosecutor's office shall promptly inform the victim of the defendant's request for an interview and shall advise the victim of the victim's right to refuse the interview.

(ii) The victim has the right to terminate the interview at any time and to refuse to answer questions during the interview. The prosecutor has standing, at the request of the victim, to protect the victim from harassment, intimidation or abuse and may seek any appropriate protective court order.

(iii) If the defendant or the defendant's attorney comments at trial on the victim's refusal to be interviewed, the court shall instruct the jury that the victim has the right to refuse an interview.

w The victim has the right at any court proceeding to not testify regarding the victim's addresses, telephone numbers, place of employment or other locating information unless the victim consents or the court orders disclosure after a finding that a compelling need for the information exists. Any court proceeding where such information might be disclosed shall be in chambers.

3-24-22 Persons Required to Report

3-24-22.1 The following individuals, having knowledge or reasonable cause to believe that a person coming before him in his professional or official capacity is a victim of domestic violence, or is in imminent danger of being victim of domestic violence, shall report the circumstances to the local law enforcement:

a Any physician, physician's assistant, psychologist, psychiatrist, mental health counselor, nurse, nurse's aide, nurse practitioner, midwife, dentist, dental assistance, hygienist, optometrist, any medical or mental health professional, school principal, school teacher, other school official, social worker, child day care center worker or other child care staff, foster parents, residential care or institutional personnel, peace officer or other law enforcement official, judge or attorney (if not prevented by the attorney client privilege), probation staff, clerk of court, other judicial system official, personnel of a domestic violence program or personnel of a domestic violence shelter care facility.

3-24-22.2 All persons required to report cases of known or suspected domestic abuse shall immediately provide a written statement to the local law enforcement agency.

3-24-22.3 Any person subject to mandatory reporting under this section who fails, neglects, or refuses to report acts of domestic violence may, after notice and hearing, be assessed a civil penalty in an amount not to exceed five hundred dollars ($500).

3-24-23 Protection of Domestic Violence Advocate

3-24-23.1 It shall be a Class 3 Misdemeanor for any person to commit any of the following acts against an employee or volunteer of a domestic violence program:

a To harass, annoy, intimidate, or make any written or verbal threats to a domestic violence advocate for the purpose of interfering with the right of any victim of domestic

violence to obtain a civil order for protection or pursue criminal charges against a perpetrator of domestic violence; or

b To harass, annoy, intimidate, or make any written or verbal threats to a domestic violence advocate which places the advocate in apprehension of bodily injury, in retaliation for the advocate's representation of a domestic violence victim.

3-24-24 Immunity from Liability

3-24-24.1 Any person, other than the alleged offender, who participates in good faith in making a report, assists in an investigation or provides preventive or remedial services with respect to domestic violence, is immune from any civil or criminal liability that might otherwise result from those actions.

3-24-24.2 All law enforcement officers shall not be held liable in civil action for an arrest based on probable cause or enforcement in good faith of a court order or any other action or omission in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to an incident.

3-24-25 Rights and Required Procedures

3-24-25.1 Notwithstanding any other provision of Tribal law, the requirements and rights set forth in this section shall be ensured in addition to, or shall supersede, any inconsistent provisions set forth in Titles I and III to ensure compliance with the Special Tribal Criminal Jurisdiction (25 U.S.C. § 1304):

a Any individual charged with an offense under this chapter shall:

(i) Be entitled to those rights enumerated in the Indian Civil Rights Act, 25 U.S.C. § 1302.

(ii) Be entitled to a trial by an impartial jury as provided in Title 1, Chapter 2, § 1-2-1 of the Three Affiliated Tribes Tribal Code.

(iii) Be entitled to the effective assistance of counsel, at least equal to that guaranteed by the United States Constitution, and, for any indigent defendant, through the appointment of a free, public defender qualified and retained by the Tribe; and

(iv) Be instructed by the judge presiding over their case, at the defendant's initial appearance before the court, of their rights, including any rights provided under 25 U.S.C. § 1304(e) and the right to habeas corpus petitions.

b Any case brought against a defendant under this chapter shall conform to the following standards and requirements:

(i) Any case brought under this chapter shall be presided over by a law-trained judge licensed to practice law in any jurisdiction in the United States, including a tribe, and who possesses sufficient legal training to preside over criminal proceedings. To the extent a law-trained judge, qualified to preside over such case under this subsection, who is regularly employed by the Tribe is unable to preside over the case, a law-trained and qualified special judge shall be appointed; and

(ii) All proceedings occurring on the record in any case brought under this chapter shall be recorded in a manner that preserves the words spoken in the proceedings, with a copy of any and all such recordings available upon request and payment of any reasonable fee for production of the copy, provided that such fee may be waived for an indigent defendant at the discretion of the court.

3-24-26 Savings and Severability

3-24-26.1 Enactment of this chapter shall not affect the prosecution for any offense, the sentencing for that offense or the recovery of any penalty or forfeiture pending at the time this chapter was enacted. To the extent any provision or section of this chapter is repealed, no prosecution for any offense,

or the recovery of any penalty or forfeiture, pending at the time the section or provision is repealed, or any judgment imposed by the court, whether such repeal be express or implied, shall be affected by such repeal, unless a contrary intention is expressly declared in the repealing act.

3-24-26.2 To the extent any section or provision of this chapter is held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining parts of this chapter, and the Tribal Business Council hereby declares it would have enacted the remaining parts of this chapter even if it had known such part or parts would be declared invalid.

3-25 **Drug Code of the Three Affiliated Tribes**

3-25-1 General Provisions – Title

This code shall be entitled as "Mandan, Hidatsa, and Arikara Nation Anti-Drug Code" and may be referred to as the Drug Code of the Three Affiliated Tribes.

3-25.1.1 Legislative Findings/Purpose

The Tribal Business Council of the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation hereby finds that methamphetamine and other illicit drugs use on the Fort Berthold Indian Reservation has become an increasing and alarming problem. The use distribution, sale, and manufacturing of methamphetamine and other illicit drugs on the Reservation has resulted in a wide range of serious social issues for the Tribes including drug addiction, violence, child endangerment and neglect, elder abuse, criminal activity and physical and mental illness. These societal issues ultimately lead to the destruction of our spiritual and cultural values and heritage. As the governing body of the Tribes, the Tribal Business Council has a duty and the authority to provide for the welfare of the members of the Tribes and to implement methods of combating the methamphetamine and illicit drug problem on the Reservation. The Tribal Business Council also finds that the Tribes current drug laws are inadequate to address these problems and new criminal and civil code provisions need to be adopted in response thereto.

This Code is intended to provide laws to prevent illegal drug trafficking of methamphetamine and other illicit drugs on the Reservation by providing stringent penalties for the use, distribution, and manufacture of methamphetamine and other illicit drugs by providing other civil sanctions including banishment from the Reservation as a form of punishment for violations of this Code. This Code is also intended to meet a larger purpose of protecting the Mandan, Hidatsa, and Arikara Nation and our children, families, and elders by providing safe communities free from illicit drug manufacturing and dealing, ensuring a stable and bright future for our children, preserving our cultural heritage and values, and overall providing safe and healthy communities for families and our future generations. Finally, this Code is intended to promote drug free communities and lifestyles and to adopt a zero tolerance for illicit drug use on the Reservation.

3-25.1.2 Authority

This Code is adopted by the Tribal Business Council of the Three Affiliated Tribes under the authority granted by Article VI, Section 3 of the Constitution of the Three Affiliated Tribes pursuant to the Tribes' inherent sovereign authority guaranteed by Treaty to govern its territory and the activities of individuals located thereon.

3-25.1.3 Original Jurisdiction

The Tribal Courts of the Three Affiliated Tribes shall have original jurisdiction over all proceedings involving drugs and drug abuse as contained in this code.

3-25.1.4 Prior Inconsistent Law, Ordinances, Statutes, Repealed

Any and all laws, ordinances, statutes, rules, or resolutions of the Three Affiliated Tribes Tribal Business Council which conflict in any manner with the provisions of this code are hereby repealed to the extent that they are inconsistent with or conflict with, or contrary to the spirit and/or purpose of this code. All prior ordinances, laws, statutes, rules, or resolutions of the Tribal Business Council dealing with the same subject matter as this code are repealed as of the date of this enactment of this code.

3-25-2 Definitions

3-25-2.1 As used in this code:

a "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(i) A practitioner (or, in his presence, by his authorized agent,) or

(ii) The patient or research subject at the direction and in the presence of the practitioner.

b "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, a distributor, or dispenser. It does not include a common or contract carrier, public warehouse worker, or employee of the carrier or warehouse worker, when acting in the usual and lawful course of the carrier's or warehouseman's business.

c "Banish" means an action whereby an individual is excluded or expelled from the Mandan, Hidatsa, and Arikara Nation for a specified period of time.

d "Bureau" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency.

e "Controlled Substance" means a drug, substance, or immediate precursor in Schedules I-V as set out in this subsections 3-25-6.1, 3-25-6.2, 3-25-6.3, 3-25-6.4, and 3-25-6.5.

f "Counterfeit substance" means a controlled substance which, or the container labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who, in fact, manufactured, distributed, or dispensed the substance.

g "Deliver" or "Delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there exists an agency relationship.

h "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for the delivery.

i "Dispenser" means a practitioner who dispenses controlled substances.

j "Distribute" means to deliver other than by administering or dispensing a controlled substance.

k "Distributor" means a person who delivers a controlled substance.

l "Drugs" means:

(i) Substances recognized as drugs in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement of the within cited registries.

(ii) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals.

(iii) Substances (other than food) intended to affect the structure of any function or the body of man or animals; and

(iv) Substances intended for use as a component of any article specified in subsections 3-25-4.1(a), (b), (c). It does not include devices or their components, parts, or accessories.

m "Drug paraphernalia" means any equipment, products, or materials of any kind which are primarily used, intended for use or designed for use by the person in possession of them, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body any controlled substance or marijuana substance in violation of the provisions of this code. It includes but is not limited to:

(i) Kits used, intended for use or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or marijuana or from which a controlled substance or marijuana can be derived;

(ii) Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance or marijuana;

(iii) Isomerization devices used, intended for use or designed for use in increasing the potency of marijuana or any species of plant which is a controlled substance;

(iv) Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances or marijuana;

(v) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances;

(vi) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(vii) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding-controlled substances;

(viii) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances; Containers or other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(ix) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body; and

(x) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the body, including:

1. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
2. Water pipes;
3. Carburetion tubes and devices;
4. Smoking and carburetion masks;
5. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, which has become too small or too short to be held in the hand;
6. Chamber pipes
7. Miniature spoons and vials used for ingesting or storing any controlled substance;
8. Carburetor pipes;
9. Electric pipes;
10. Air-driven pipes;
11. Chillums;
12. Bongs;
13. Ice pipes and chillers;

14. Cigarette rolling papers when they are used or intended for use in ingesting marijuana; and
15. Any ordinary household device such as light bulb or writing pens when they are used or intended to be used in connection with the ingestion of a controlled substance or marijuana.

n "Imitation controlled substance" means a substance that is not a controlled substance, but which by appearance, including color, shape, size, markings, or packaging, or by representations made, would lead a reasonable person to believe that the substance is a controlled substance.

o "Immediate precursor" means a substance which the Tribal Business Council has found to be and by law designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

p "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly, indirectly, or extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. Except, that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(i) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or

(ii) By a practitioner, or by his authorized agent under this supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

q "Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture, or preparation of mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

r "Medical cannabinoid product" means a product intended for human consumption or use which contains cannabinoids.

s "Medical marijuana product" means a cannabinoid concentrate or a medical cannabinoid product.

t "Medical use of marijuana" means the acquisition, use, and possession of usable marijuana to treat or alleviate a qualifying patient's debilitating medical condition.

u "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis:

(i) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(ii) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substance referred to in 3-25-6.2(c)(ii)(2), but not including the isoquinoline alkaloids of opium (used in drugs for aesthetics, antihypertension, or vasodilators);

(iii) Opium poppy and poppy straw; and

(iv) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and salt, compound, derivative, or preparation thereof, which is chemically equivalent

or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

v "Opiate" means any substance having an addiction-forming or addiction-sustaining ability similar to morphine or being capable of conversion into a drug having addiction forming or addiction-sustaining ability. It does not include, unless specifically designated as controlled under Tribal law, the dextrorotatory isomer of 3-methoxy-n- methyl-morphinan and its sales (dextromethorphan). It does include its racemic and levorotatory forms.

w "Opium poppy" means the plant of the species Papaver somniferum L. except for its seeds (poppy seeds used for baking or cooking).

x "Person" means men, women, and children.

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

z "Practitioner" means:

(i) A physician, dentist, veterinarian, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research on this Reservation.

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

aa "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

bb "Possess" means actual or constructive possession. Actual possession means having control over a controlled substance, marijuana, or paraphernalia. Constructive possession means having control or dominion over a controlled substance, marijuana, or paraphernalia without actual possession or custody of it.

cc "Reservation" means the Fort Berthold Indian Reservation as described in Article I o the Constitution of the Three Affiliated Tribes.

dd "Tribes" means the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation.

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

ff "Vaping" means using a small, handheld device (like e-cigarettes, vape pens or mods) to inhale a mist of nicotine and flavoring (e liquid). It is similar to smoking a cigarette, but vaping heats tiny particles out of a liquid rather than burning tobacco.

3-25-3 Classification of Offenses and Penalties

3-25-3.1 For purposes of this code the following classification of offenses and penalties shall apply:

a Felony: A maximum of three (3) years imprisonment with a mandatory minimum of one hundred eighty (180) days imprisonment, and a maximum fine of five thousand (5,000) dollars, or both may be imposed.

b Class 1 Misdemeanor: A maximum penalty of one (1) year imprisonment with a mandatory minimum of thirty (30) days imprisonment, a maximum fine of two thousand five hundred (2,500) dollars, or both may be imposed.

c Class 2 Misdemeanor: A maximum penalty of six (6) months imprisonment with a mandatory minimum of ten (10) days imprisonment, a maximum fine of one thousand (1,000) dollars, or both may be imposed.

d Class 3 Misdemeanor: A maximum penalty of ninety (90) days imprisonment, a maximum fine of seven hundred fifty (750) dollars, or both may be imposed.

e Class 4 Misdemeanor: A maximum penalty of thirty (30) days imprisonment, a maximum fine of five hundred (500) dollars, or both may be imposed.

3-25-3.2 In addition to the penalties set out above, the Court may impose other penalties including but not limited to the requirement to pay restitution, serve probation, complete community service, the forfeiture of assets as set out in 3-25-4 of this code and a drug and alcohol evaluation and treatment.

3-25-3.3 Any person placed on probation for a violation of this code shall be subject to random drug testing and searches of such person's residences as a condition of probation.

3-25-3.4 Nothing in this section or chapter shall prohibit any person charged with or convicted for any offense set out herein from participating in a drug court or alternative court program which has an emphasis on rehabilitation that may in the future be established by the Court or Tribe. The mandatory minimum sentences required by this section may be suspended provided that the person successfully completes such program.

3-25-3.5 Enhancement of Penalties

The penalties for conviction of any of the offenses set out in this chapter may be enhanced based on the following enhancement factors:

a The quantity of controlled substances or marijuana involved in the offense as follows:
   (i) Any amount in excess of 3 grams of a controlled substance for a violation of 3-25-5 or 3-25-9; or
   (ii) Any amount in excess of 15 grams of marijuana for a violation of 3-25-3.6 or 3-25-10.

b If the controlled substance involved in the offense is listed on Schedule I-V of Chapter 3-25 or specifically if the controlled substance is methamphetamine, or any of its salts, its isomers, or its salts of isomers;

c If the defendant has a prior record of similar offenses in tribal, federal, or state court; or

d Use or possession of any firearm or other weapon within the occurrence of the offense.

3-25-3.6 Mandatory Bond Requirements for Manufacture, Distribution or Delivery of Controlled Substance

Any individual arrested whether by warrant or by law enforcement without a warrant for a violation of 3-25-5 or 3-25-7 shall not be released from custody until the individual appears before a Tribal court judge or magistrate judge. Any individual arrested for a violation of 3-25-5 or 3-25-7 shall be subject to a mandatory minimum of five thousand (5,000) dollars cash or surety bond.

3-25-3.7 Assessment of Anti-Drug Fee

In addition to the penalties imposed pursuant to 3-25-3.1, the Court shall also impose an anti-drug fee of one hundred (100) dollars for any Felony or Class 1 Misdemeanor violation of this code, fifty (50) dollars for Class 2 Misdemeanor violation of this code, and twenty-five (25) dollars for a Class 3 or Class 4 Misdemeanor violation of this code. The fees shall be collected by the court and disbursed by the court to the Tribe. The fees assessed and collected under this section are intended to help defray the societal costs associated with drug distribution and use. The fees shall therefore be set aside in a separate account and budgeted by the Judicial Committee of the Tribal Business Council for tribal law enforcement, detention services, social services including domestic violence, and drug and alcohol treatment programs.

3-25-4 Prohibited Acts

3-25-4.1 Delivery or Distribution of Controlled Substances

It shall be a Felony offense for any person to distribute, deliver or possess with intent to

distribute or deliver any controlled substance. A practitioner while acting in the course of his professional practice shall be exempt from this provision.

3-25-4.2 Delivery or Distribution of Marijuana

It shall be a Class 1 Misdemeanor offense for any person to deliver, distribute, or possess with intent to deliver or distribute less than one (1) ounce of marijuana. It shall be a Felony offense for any person to deliver, distribute, or possess with intent to deliver or distribute more than one (1) ounce of marijuana.

3-25-4.3 Manufacture of a Controlled Substance or Marijuana

It shall be a Felony offense for any person to manufacture a controlled substance or marijuana or possess drug paraphernalia with the intent to manufacture a controlled substance or marijuana.

3-25-4.4 Presumption of Intent to Manufacture, Deliver, or Distribute Controlled Substance or Marijuana

The following factors shall give rise to a rebuttal presumption of possession with intent to manufacture, deliver, or distribute a controlled substance or marijuana:

a Whether the controlled substance or marijuana is found in a proximate location to paraphernalia or other supplies and equipment associated with the manufacture or distribution of a controlled substance or marijuana.

b The amount of controlled substance or marijuana the person is found in possession of as follows:

i More than 5 grams of a controlled substance; or

ii More than 2 ounces of marijuana.

c Whether the controlled substance or marijuana is packaged in a manner that would indicate intent to distribute the controlled substances or marijuana, such as packaged in separate bags or measured in equal quantities.

d Whether the controlled substances are found in connection with large amounts of cash or with supplies and/or equipment commonly used in the distribution or manufacture of controlled substances or marijuana, such as scales, packages or other drug paraphernalia.

3-25-4.5 Possession of Controlled Substance

It shall be a Class 1 Misdemeanor for any person to knowingly possess a controlled substance, unless the substance was obtained directly or pursuant to a valid prescription or order from a practitioner, while acting in the course of the practitioner's professional practice.

3-25-4.6 Possession of Marijuana

It shall be a Class 1 Misdemeanor for any individual to knowingly possess more than one (1) ounce of marijuana.

a Possession of less than one (1) ounce of marijuana is a Class II Misdemeanor.

b Possession of Medical Marijuana is recognized within the Fort Berthold Indian Reservation provided that:

(i) The patient must have a valid registry identification card with an issuance date and expiration date;

(ii) The patient must have a valid prescription obtained from a licensed physician;

(iii) The patient must keep the medical marijuana in the original container obtained from the dispensary with the patient’s name on the container; and

(iv) During a thirty (30) day period the patient may not possess more than two and one-half (2.5) ounces of dried leaves or flowers of the plant genus cannabis in a combustible delivery form.

3-25-4.7 Obtaining Controlled Substance by Theft, Misrepresentation, Forgery or Fraud

It shall be a Class 2 Misdemeanor for any person to knowingly obtain possession of a controlled substance or marijuana by theft, misrepresentation, forgery, fraud, deception, or subterfuge.

3-25-4.8 Keeping Place for Use or Sale of Controlled Substance or Marijuana

It shall be a Class 2 Misdemeanor for any person to keep or maintain a place which is frequented as a hangout for person using controlled substances or marijuana for the purpose of using such substances or is used for the keeping or selling of such substances.

3-25-4.9 Inhabiting a Place Where Controlled Substances or Marijuana are Illegally Stored

It shall be a Class 3 Misdemeanor for any person to inhabit a place knowing that any controlled substance or marijuana is being stored or used therein.

3-25-4.10 Ingesting a Controlled Substance or Marijuana

It is a Class 3 Misdemeanor for any person to intentionally ingest or otherwise receive into their body by any other means, a controlled substance or marijuana, unless such controlled substance or marijuana is prescribed by a practitioner lawfully acting in the course of the practitioner's professional practice.

3-25-4.11 Distribution or Delivery of a Controlled Substance or Marijuana to a Minor

It is a Felony offense for any person to distribute or deliver a controlled substance or marijuana to a person who has not attained the age of eighteen (18) years, unless such controlled substance or marijuana is prescribed by a practitioner lawfully acting in the course of the practitioner's professional practice.

3-25-4.12 Drug Free Zones Created

It shall be a Class 1 Misdemeanor for any person who commits a violation of §§ 3-25-4.1; 3-25-4.2; or 3-25-4.3 if the violation occurs:

a In, on, or within 1000 feet of real property comprising a public or private elementary or secondary school, head start center, daycare center, playground, or college; or

b In, on, or within 1000 feet of real property comprising a public or private youth center, public swimming pool, video arcade center, community center, park, or pow-wow grounds.

3-25-4.13 Unlawful Possession of Drug Paraphernalia

It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the drug code of the Three Affiliated Tribes. A person violating this subsection is guilty of a Class 1 Misdemeanor if the drug paraphernalia is used or possessed with intent to be used, to manufacture, compound, convert, produce, process, prepare, test, or analyze a controlled substance, classified in Schedule I, II, or III of the drug code of the Three Affiliated Tribes, §§ 3-25-6.1, 3-25-6.2, 3-25-6.3. Otherwise, a violation of this subsection is a Class 2 Misdemeanor. Drug paraphernalia possessed and used to ingest medical marijuana prescribed by a licensed physician shall not be considered an offense.

3-25-4.14 Unlawful Manufacture or Delivery of Drug Paraphernalia

It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under the circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store,

contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this drug code of the Three Affiliated Tribes. A person violating this subsection is guilty of a Class 1 Misdemeanor if the drug paraphernalia will be used to manufacture, compound, convert, produce, process, prepare, test, or analyze a controlled substance classified in Schedule I, II or III of this drug code. Otherwise, a violation of this subsection is a Class 2 Misdemeanor.

3-25-4.15 Unlawful Delivery of Drug Paraphernalia to a Minor

It shall be unlawful for any person eighteen (18) years of age or over to deliver drug paraphernalia, in violation of this section, to a person under eighteen (18) years of age. A person violating this subsection is guilty of a Class 1 Misdemeanor.

3-25-4.16 Unlawful Advertisement of Drug Paraphernalia

It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed for or intended for use as drug paraphernalia. A person violating this subsection is guilty of a Class 2 Misdemeanor.

3-25-4.17 Drug Paraphernalia

In determining whether an object is drug paraphernalia, the Tribal court or other legal authority should consider, in addition to all other logically relevant factors, the following:

a Statements by an owner or by anyone in control of the object concerning its use;
b Prior convictions, if any, of an owner, or of anyone in control of the object, under any tribal, state, or federal law relating to any controlled substance;
c The proximity of the object, in time and space, to a direct violation of the drug code of the Three Affiliated Tribes.
d The proximity of the object to a controlled substance;
e Direct or circumstantial evidence of the intent of the owner, or of anyone in control of the object, to deliver it to persons whom he knows, or reasonably should know, intend to use the object to facilitate a violation of the drug code of the Three Affiliated Tribes;
f The innocence of the owner, or of anyone in control of the object, shall not prevent a finding that the object is intended for use or designed for use as drug paraphernalia;
g Instructions, oral or written, provided with the object concerning its use;
h Descriptive materials accompanying the object which explain or depict its use;
i National and local advertising concerning its use;
j The way the object is displayed for sale;
k Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
l Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
m The existence and scope of legitimate uses for the object in the community; and
n Expert testimony concerning its use.

3-25-4.18 Exemption for Bona Fide Use of Peyote by Members of Native American Church

The provisions of this chapter relating to the possession, distribution, delivery, or ingestion of controlled substances shall not apply to the use of peyote by members of the Native American Church in bona fide religious ceremonies of the Church provided that the Church shall have obtained a federal peyote use permit.

3-25-5 Nomenclature

This drug code adopts 21 U.S.C. 1308 Schedules I, II, III, IV, and V with any amendments which may subsequently be added and shall, unless and until amended, consist of the drugs or other substances, by whatever official name, common or unusual name, chemical name, or brand name designated.

3-25-6 Schedules for Drug Code

3-25-6.1 Schedule I

a The drug or other substance has a high potential for abuse.

b The drug or other substance has no currently accepted medical use in treatment in the United States.

c There is a lack of accepted safety for the use of the drug or other substance under medical supervision.

(i) The controlled substances listed in this subsection are included in Schedule I.

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

1. Acetylmethadol;
2. Allylprodine;
3. Alphacetylmethadol;
4. Alphameprodine;
5. Alphamethadol;
6. Benzethidine;
7. Betacetylmethadol;
8. Betameprodine;
9. Betamethadol;
10. Betaprodine;
11. Clonitazene;
12. Dextromoramide;
13. Dextrorphan;
14. Diampromide;
15. Diethylthiambutene;
16. Dimenoxadol;
17. Dimepheptanol;
18. Dimethylthiambutene;
19. Dioxaphetyl butyrate;
20. Dipipanone;
21. Ethylmethylthiambutene;
22. Etonitazene;
23. Etoxeridine;
24. Furethidine;
25. Hydroxypethidine;
26. Ketobemidone;
27. Levomoramide;
28. Levophenacylmorphan;
29. Morpheridine;
30. Noracymethadol;
31. Norlevorphanol;
32. Normethadone;
33. Norpipanone;
34. Phenadoxone;

35. Phenampromide;
36. Phenomorphan;
37. Phenoperdine;
38. Piritramide;
39. Propheptazine;
40. Properidine;
41. Racemoramide;
42. Trimeperidine.

(iii) Unless specifically accepted, or unless listed in another schedule any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

1. Acetorphine;
2. Acetyldihydrocodeine;
3. Benzylmorphine;
4. Codeine methylbromide;
5. Codeine- N-Oxide;
6. Cyprenorphine;
7. Desomorphine;
8. Dihydromorphine;
9. Etorphine;
10. Heroin;
11. Hydromorphinol;
12. Methyldesorphine;
13. Methylhydromorphine;
14. Morphine methylbromide;
15. Morphine methylsulfonate;
16. Morphine-N-Oxide;
17. Myrophine;
18. Nicocodeine;
19. Nicomorphine;
20. Normorphine;
21. Pholcodine;
22. Thebacon.

(iv) Unless specifically excepted or unless listed in another schedule any material, compound, mixture, or preparation which contains any quality of the following hallucinogenic substances their salts, isomers, and salts of isomers, unless specifically excepted, wherever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. 3, 4- methylenedioxy amphetamine;
2. 5-methoxy-3,4 methylenedioxy amphetamine;
3. 3,4,5-trimethoxy amphetamine;
4. Bufotenine;
5. Diethyltryptamine;
6. Dimethyltryptamine;
7. 4-methyl-2,5-dimethoxyamphetamine;
8. Ibogaine;
9. Lysergic acid diethylamide (LSD);
10. Non-medical Marijuana (Medical marijuana is excepted from schedule I and use and possession is allowed by prescription from a licensed physician).

11. Mescaline;
12. Peyote (Peyote ~~is excepted from schedule and the~~ use for religious purposes is allowed with federal peyote permit).
13. N-ethyl-3-piperidyl benzilate;
14. N-methyl-3-piperidyl benzilate;
15. Psilocybin;
16. Psilocyn;
17. Tetrahydrocannabinols, except for tetrahydrocannabinols in hemp (as defined under 7 U.S.C. §1639o);
18. 4-methylmethcathinone (Mephedrone);
19. 3, 4-methylenedioxypyrovalerone (MDPV);
20. 2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C-E);
21. 2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C-D);
22. 2-(4-Chloro-2,5- dimethoxyphenyl) ethanamine (2C-C);
23. 2-(4-Iodo-2,5-dimethoxyphenyl) ethanamine (2C-I);
24. 2-[4-(Ethylthio)-2,5-dimethoxyphenyl] ethanamine (2C-T-2);
25. 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl] ethanamine (2C-T-4);
26. 2-(2,5-Dimethoxyphenyl) ethanamine (2C-H);
27. 2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N);
28. 2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C-P)

(v) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3-25-6.2 Schedule II

a The drug or other substance has a high potential for abuse.

b The drug or other substance has a currently accepted medical use in treatment in the United States or a currently medical use with severe restrictions.

c Abuse of the drug or other substances may lead to severe psychological or physical dependence.

(i) The controlled substances listed in this subsection are included in Schedule II.

(ii) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

1. Opium or opiate, and any salt, compound, derivative, or preparation of opium or opiate.
2. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subsection 3-25-6.2(c)(ii)(1), except that these substances shall not include the isoquinoline alkaloids of opium.
3. Opium poppy and poppy straw.
4. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine and their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.

(iii) Unless specifically excepted or unless listed in another schedule, any of the following

opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever this existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

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

d Unless specifically excepted or listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including their salts, isomers, and salts of isomers.

3-25-6.3 Schedule III

a The drug or other substance has a potential for abuse less than the drugs or other substances in Schedule I and II.

b The drug or other substance has a currently accepted medical use in treatment in the United States.

c Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(i) The controlled substances listed in this subsection are included in Schedule III.

(ii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect in the central nervous system:

1. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
2. Phenmetrazine and its salts;
3. Any substance (except an injectable liquid) which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers; or
4. Methylphenidate.

(iii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

1. Any substances which contain any quantity of derivative of barbituric acid, or any salt of a derivative of barbituric acid;
2. Chlorhexadol;

3. Glutethimide;
4. Lysergic acid;
5. Lysergic acid amide;
6. Methyprylon;
7. Phencyclidine;
8. Sulfondiethylmethane;
9. Sulfonethylmethane;
10. Sulfomethane; or
11. Nalorphine.

(iv) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

1. Not more the 1.8 grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater than quantity of an isoquinoline;
2. Not more than 1.8 grams of codeine, or any of its salts per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
3. Not more than three hundred (300) milligrams of dihydrocodeinone or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
4. Not more than three hundred (300) milligrams of dihydrocodeinone, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
5. Not more than 1.8 grams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, a nonnarcotic ingredient in recognized therapeutic amounts;
6. Not more than three hundred (300) milligrams of ethylmorphine or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
7. Not more than five hundred (500) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or
8. Not more than fifty (50) milligrams of morphine or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or
9. The accepted amount of legal use of anabolic steroids depends on the medical purpose with a valid prescription from a licensed physician.

(v) The Tribal Business Council may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 3-25-6.3(c)(ii)-(iii) of this section from the application of all or any part of this code if the compound, mixture or preparation contains one or more active medical ingredients not having a stimulant or depressant effect of the central nervous system, and if the admixtures are included therein in combination, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect of the central nervous system.

3-25-6.4 Schedule IV

a The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule III.

b The drug or other substance has a currently accepted medical treatment in the United States.

c Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

(i) The controlled substances listed in this subsection are included in Schedule IV.

(ii) Any materials, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse limited to physical dependence or psychological dependence relative to the drugs or substances in Schedule III:

1. Barbital;
2. Chloral betaine;
3. Chloral hydrate;
4. Chlordiazepoxide and its salts;
5. Diazepam;
6. Ethchlorvynol;
7. Ethinamate;
8. Methohexital;
9. Meprobmate;
10. Methylphenobarbital;
11. Paraldehyde;
12. Petrichloral;
13. Phenobarbital.

d The Tribal Business Council may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection 3-25-6.4(c)(ii) of this section from the application of all or any part of this code if the compound, mixture, or preparation contains one or more active medical ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combination, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

3-25-6.5 Schedule V

a The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule IV.

b The drug or other substance has a currently accepted medical use in treatment in the United States.

c Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule IV.

(i) The controlled substances listed in this subsection are included in Schedule V.

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

1. Not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams.
2. Not more than one hundred (100) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams.
3. Not more than one hundred (100) milligrams of ethylmorphine or any of its salts,

per one hundred (100) milliliters or per one hundred (100) grams.

4. Not more than two and five tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulphate per dosage unit.
5. Not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams.

3-25-7 **Forfeiture of Drug Related Assets**

3-25-7.1 Forfeiture of Drug Related Assets and Money

The following are subject to forfeiture and no property right shall exist in them:

a All controlled substances or marijuana which have been manufactured, distributed, or acquired in violation of this code or federal law;

b All raw materials, products, and equipment of any kind which are used, or intended for use in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance or marijuana in violation of this code or federal law;

c All vehicles or vessel which are used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b) provided that:

(i) No vehicle or vessel used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this subsection unless it appears that the owner or other person in charge of the vehicle or vessel is a consenting party or aware of a violation of this code or federal law;

(ii) No vehicle or vessel is subject to forfeiture under this subsection by reason of any act or omission established without the owner's consent or knowledge; or

(iii) A forfeiture of a vehicle or vessel encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission.

d All drug paraphernalia as defined in this code; and

e All money, coin, currency, and everything of value furnished, or intended to be furnished, in exchange for controlled substances or marijuana in violation of this code or federal law and all real and personal property, assets, profits, income, proceeds, or an interest therein, acquired or derived from the unlawful purchase, attempted purchase, delivery, attempted delivery, manufacturing or attempted manufacturing of any controlled substance or marijuana.

3-25-7.2 Seizure Upon Process of Property Subject to Forfeiture

Any property subject to forfeiture under this chapter may be seized by any law enforcement officer upon process issued by a court of competent jurisdiction.

3-25-7.3 Seizure Without Process of Property Subject to Forfeiture

Seizure of property subject to forfeiture under this chapter may be made without process issued under subsection 3-25-7.2 when:

a The seizure is made incident to an arrest or a search under a warrant issued by a court of competent jurisdiction;

b The property subject to seizure has been the subject of a prior judgment in favor of the Tribe in a criminal or forfeiture proceeding under this chapter;

c The law enforcement officer has probable cause to believe that the property has been used or intended to be used in violation of this code. Probable cause for purposes of this subsection shall mean a reasonable ground to suspect that the property in question has been used in violation of this code.

(i) If property described in subsection 3-25-7.1(c) or (e) is seized under subsection 3-25-7.3(c), any individual claiming ownership of such property may request a probable

cause hearing to determine whether probable cause exists that the property was used or intended to be used in violation of this code. The court shall hold a hearing within forty-eight (48) hours of a request for a probable hearing, exclusive of weekends and holidays. If the court determines that probable cause does exist that the property was used or intended to be used in violation of this code, then the property shall be subject to forfeiture according to subsection 3-25-7.8 (below). If the court determines that probable cause does not exist, then the property shall be returned to the individual claiming ownership of the property.

3-25-7.4 Removal and Custody of Seized Property

Whenever property is seized under the provisions of this chapter, the law enforcement officer shall remove the property and place in a secure location for disposition in accordance with this code.

3-25-7.5 Forfeiture Proceedings

Forfeiture proceedings shall be civil actions against the property seized and the standard of proof shall be preponderance of the evidence.

3-25-7.6 Summary Forfeiture of Certain Property Deemed Contraband

All property described in subsection 3-25-7.1(a), (b), and (d) is hereby deemed to be contraband and shall be summarily forfeited to the Tribe.

3-25-7.7 Disposition of Property Deemed Contraband

The law enforcement agency which is authorized to provide law enforcement service on the Reservation shall be authorized to dispose of the property deemed contraband pursuant to Section 3-25-6 in a manner consistent with the proper disposition of such contraband.

3-25-7.8 Summons and Complaint Required for Forfeiture, Contents, and Notice

When property described in subsections 3-25-7.1 (c) and (e) is seized, the prosecutor for the Tribe shall file a summons and complaint for forfeiture of such property in the Fort Berthold District Court. The proceedings shall be brought in the name of the Tribe. The complaint shall describe the property, state its location, state its present custodian, state the name of each owner if known, state the name of any party if known, state the essential elements of the violation which is claimed to exist, and conclude with a request to enforce the forfeiture. Notice of forfeiture proceedings shall be given to each known owner and known party in interest by serving a copy of the summons and complaint in accordance with Title II, Rules of Civil Procedure.

3-25-7.9 Verified Answer by Claimant of Property Seized – Time for Filing

Within thirty (30) days after service of the summons and complaint, the owner of the seized property and any other party in interest or claimant shall file a verified answer to the complaint contesting the forfeiture procedures.

3-25-7.10 Disposition of Seized Property if No Answer is Filed

If at the end of the thirty (30) days after the summons and complaint have been served there is no answer filed and no claimant has appeared to defend said complaint, the court shall order the disposition of the seized property as requested in the complaint and as set out in subsection 3-25-7.12 of this chapter.

3-25-7.11 Trial of Contested Forfeiture

If a verified answer is filed, the forfeiture proceedings shall be set for hearing on a date not

more than sixty (60) days from the date the answer is filed. At the hearing the Tribe shall establish probable cause for instituting the forfeiture action following which any owner, party in interest, or claimant who has filed an answer shall have the burden of proving that the property seized is not subject to forfeiture. If the court finds the property is not subject to forfeiture, the court shall order the property released to the owner, party in interest, or claimant as his right, title, or interest appears. The court shall order the property forfeited to the Tribe if it determines that such property was subject to forfeiture.

3-25-7.12 Disposition of Property Forfeited Pursuant to Subsection 3-25-7.11

When property is forfeited pursuant to subsection 3-25-7.11, the Tribe acting through the Judicial Committee of the Tribal Business Council may:

a Award the property to Tribal law enforcement, detention services, or social services including domestic violence programs or Tribal drug and alcohol treatment programs; or

b Order the property to be sold at auction or other adequate means and award the proceeds thereof to be granted to those agencies set forth in subsection (a) above.

3-25-8 Protection of Children

3-25-8.1 Child Exposed to Methamphetamine/Controlled Substance Meets Definition of Youth-in-Need-of-Care

A child whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamine or any other unlawfully controlled substance meets the definition of a youth-in-need-of-care and is subject to the provisions of the Three Affiliated Tribes Child Welfare Code, Title XIV, or any subsequent amendments thereto.

3-25-8.2 Child Exposed to Environment Where Methamphetamine/Controlled Substance is Being Manufactured, Used, or Distributed Subject to Removal from Custody of Parent, Guardian or Custodian.

Any child who is found in an environment where methamphetamine or other controlled substance is being manufactured, used, or distributed may be removed from their parent, guardian, or custodian and taken into custody by a law enforcement officer in accordance with the Three Affiliated Tribes Child Welfare Code, Title XIV, or any subsequent amendments thereto.

3-25-8.3 Daycare Providers to be Drug Free

All daycare providers providing daycare services on the Reservation shall be free from the use of a controlled substance except to use prescribed by a practitioner lawfully acting in the course of the practitioner's professional practice. Violation of this section may result in the revocation of the daycare license issued by the Three Affiliated Tribes.

3-25-8.4 Implied Consent for Daycare Providers

All daycare providers licensed by the Three Affiliated Tribes to provide daycare services on the Reservation shall be deemed to have given consent to inspections of their daycare center and to a chemical test, or tests of the blood, breath, saliva, or urine of employees or other designated staff for the purpose of determining whether or not the license has violated the provisions of subsection 3-25-8.3 above. All licensed daycare providers and staff shall also be subject to random testing which shall be conducted and enforced by the Three Affiliated Tribes Social Services Program. Failure to comply with the testing requirements of this section shall subject the daycare provider to revocation of such license.

3-25-8.5 Education in Public Schools on Methamphetamine and Other Controlled Substances

All public or private elementary, junior high, and high schools on the Reservation are hereby encouraged to provide educational information and develop prevention curriculum on the effects of methamphetamine and other controlled substances with the goal of preventing youth from using methamphetamine and other controlled substances. The Three Affiliated Tribes Education Department shall work with the schools on the Reservation to develop and implement education information and prevention curriculum.

3-25-9 **Banishment of Drug Dealers**

3-25-9.1 Purpose

The purpose of this section is to adopt a statutory basis and authority for banishing non-members from the Fort Berthold Indian Reservation who have been convicted of selling or otherwise distributing or manufacturing methamphetamine or other controlled substances on the Reservation. This section is intended to provide a process to prevent the illegal trafficking of methamphetamine and other controlled substances on the Reservation and to protect the Mandan Hidatsa Arikara Nation members and future generations from the harmful and devastating effects of methamphetamine and other controlled substances use on the Mandan Hidatsa Arikara Nation's members and its communities.

a The fundamental purpose of this section is two-fold:
   i. To protect the health, safety, and welfare of the Mandan Hidatsa Arikara Nation and its members; and
   ii. To provide the non-member to be banished with the motivation to seek treatment and rehabilitation so that their conduct is no longer a threat to the health, safety and welfare of the Nation.

3-25-9.2 Banishment of Non-Members Convicted of Sale, Distribution, or Manufacture of Methamphetamine or Controlled Substances

Any non-member who has been convicted of a violation pursuant to this drug code or by another court of competent jurisdiction of selling, distributing, or manufacturing methamphetamine or other controlled substances on the Reservation shall upon conviction and release from custody or incarceration be banished from the Reservation in accordance with the terms of this section. An individual banished pursuant to the terns of this section shall be prohibited from residing on, being located upon or entering onto the Reservation. Upon the entry of an order pursuant to this section the individual shall be expelled from the Reservation.

3-25-9.3 Length of Banishment

The length of banishment shall be as follows:

a First conviction – One (1) year unless substantial evidence of rehabilitation is shown and, in that event, the banishment shall be stayed provided the individual remains rehabilitated. The Tribe shall not be responsible for providing rehabilitation services.
b Second conviction – Three (3) years.
c Third and subsequent convictions – Banishment for life of individual.

3-25-9.4 Banishment Process

Upon the receipt of information that a non-member has been convicted of delivering, distributing, or manufacturing methamphetamine or other controlled substances on the Reservation and has been released from custody and intends to return to the Reservation or has been returned to the Reservation, the Tribal Prosecutor shall bring a civil action in Tribal court to ban the individual from the Reservation pursuant to the terms of this section. The action shall be processed in accordance with the Three Affiliated Tribes Rules of Civil Procedure with adequate notice and opportunity for a hearing provided to the individual. Upon notice, a hearing,

and proof that the individual meets the grounds for banishment, the court shall enter an order banishing the individual from the Reservation in accordance with this section.

3-25-9.5 Enforcement of Banishment

It shall be the responsibility of any law enforcement officer authorized and required to enforce the laws of the Three Affiliated Tribes to enforce this section by arresting any person who violates a banishment order. Banishment may also be enforced by the Fort Berthold District Court through contempt proceedings.

3-25-9.6 Violation of Banishment

Any individual who violates a banishment order shall be guilty of a Class 1 Misdemeanor.

3-25-10 **Use of Canines**

3-25-10.1 Authorization for Use of Canine Officers

Any law enforcement agency which is authorized by law to provide law enforcement services on the Reservation is hereby authorized to use canines or drug dogs for the detention of controlled substances including marijuana, provided that this authorization does not in any way create any liability on the Tribe for the use of such canines. The law enforcement agency using a canine on the Reservation shall be responsible for any liability that may arise from such use and shall ensure that adequate insurance coverage is acquired to cover any liability that may arise from its use.

3-25-10.2 Canine Handlers

Any authorized handler of a canine shall be trained and certified by the United States Police Canine Association or other recognized canine association. No other officer or individual shall be a handler unless trained and certified in accordance with this subsection.

3-25-10.3 Requests for Use of Canine Officer

Requests for the immediate tactical utilization of the services of the canine may be made by any law enforcement officer. Such requests shall be made to the law enforcement dispatch center who shall direct the canine and handler to be dispatched. The handler shall be responsible for determining whether the circumstances justify the use of the canine, and if appropriate, the scope of utilizing the canine.

a. Other agencies such as public or private schools, county law enforcement, public housing and tribal agencies may request the use of the canine provided that such agencies have adopted policies and procedures governing the use and the individual making the request on behalf of the agency is authorized to make such requests.

3-25-11 **Miscellaneous Provisions**

3-25-11.1 Control of Methamphetamine Precursors by Retailers

No retailer on the Reservation may sell, in a single transaction, more than two (2) packages containing pseudoephedrine or ephedrine as an active ingredient. For the purpose of this subsection, a retailer means any individual who sells at retail and from whom original packages of non-prescription drugs are sold or taken to be sold at retail. Any retailer or employee of a retailer who violates this subsection shall be guilty of a Class 2 Misdemeanor.

3-25-11.2 Limitation on Purchases by Consumers

No person may purchase, in a single transaction, more than two (2) packages containing pseudoephedrine or ephedrine as an active ingredient. Any person who violates this subsection shall be guilty of a Class 2 Misdemeanor.

3-25-11.3 Possession of Product, Mixture, or Preparation Containing Ephedrine Base, Pseudoephedrine Base or Phenylpropanolamine Base Restricted Exceptions

No person may possess, receive, or otherwise acquire more than nine (9) grams of ephedrine base, pseudoephedrine base or phenylpropanolamine base in any product, mixture, or preparation within any thirty (30) day period. This restriction does not apply to any quantity of product, mixture, or preparation obtained pursuant to a valid prescription drug order by a practitioner as defined in subsection 3-25-2.1(y) of this code.

a. Possession of more than nine (9) grams of a drug product containing ephedrine base, pseudoephedrine base, or phenylpropanolamine base constitutes a rebuttable presumption of the intent to use the product as a precursor to methamphetamine. This rebuttable presumption does not apply to:
    i. A retail distribution of drug products;
    ii. A wholesale drug distributor or its agents;
    iii. A licensed pharmacists;
    iv. A licensed health care professional possessing the drug products in the course of carrying out their profession.
b. A violation of this subsection is a Class 1 Misdemeanor.

3-25-11.4 Disclosure of Knowledge of Existence of Prior Manufacturing/Distribution of Methamphetamine by Lessor of Real Property

In the leasing of any residential premises on the Reservation, any lessor who has actual knowledge of the existence of any prior manufacturing or distribution of methamphetamine on the rental property premises shall disclose that information to any lessee or any person who may become a lessee of the premises.

a. Any person who violates this subsection shall be subject to a civil penalty of up to one thousand (1,000) dollars.

3-25-11.5 Disclosure of Knowledge of Existence of Prior Manufacturing/Distribution of Methamphetamine by Seller of Residential Property

Any seller of residential property within the boundaries of the Reservation who has actual knowledge of the existence of any prior manufacturing or distribution of methamphetamine on the property shall disclose that information to the buyer or any person who may become the buyer of the residential premises.

a. Any person who violates this subsection shall be subject to a civil penalty of up to one thousand (1,000) dollars.

3-25-11.6 Lessor Responsibility to Test Property Exposed to Methamphetamine

Exposure to the chemicals involved in the use or manufacture of methamphetamine is a public health hazard. Any lessor of residential property shall be required to have any residential property intended for leasing tested and evaluated for hazardous chemicals when the lessor has knowledge that the property has been used for the manufacture or use of methamphetamine. Testing and evaluation shall be conducted by a company or individual certified to perform such testing. If the company or individual who performs the testing and evaluation recommends that remedial action to eliminate contamination be taken, the lessor must make such remedial action as recommended prior to leasing the property.

a. Any person who violates this subsection shall be subject to a civil penalty of up to one thousand (1,000) dollars.

3-26 Criminal Traffic Offenses and Penalties

3-26.1 Definitions

In this chapter, unless the context or subject matter otherwise provides:

a "Actual Physical Control" means being in immediate control or having the ability to operate the motor vehicle while being under the influence or having a blood concentration of eight one hundredths (0.08) of one percent (1%) or more.

b "Alcohol Substance" means any liquid suitable for drinking by human beings, which contains alcohol.

c "Controlled Substance" means a drug, substance, or immediate precursor by whatever official, common, usual, chemical, or trade name designated in Chapter 25, Drug Code of this Title, Schedules I through V.

d "Drive" a person who operates and is in actual physical control of the direction and speed of a motor vehicle.

e "Highway" shall mean the entire width between the boundary lines of every road publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

f "Judgment" shall mean any order of a court of competent jurisdiction made in respect of a matter which it has adjudicated upon, which determines the rights and liabilities of the parties in respect of which the order was made. A court judgment to be valid must have the reasoning upon which the decision was made.

g "Legal Owner" means a person holding the legal title to a vehicle.

h "Lienholder" means a person holding a security of a vehicle.

i "Motor Vehicle" shall include any road vehicle powered by an internal combustion engine or rechargeable batteries.

j "Non-Resident" shall mean any person who does not reside within the Three Affiliated Tribes/MHA Nation jurisdiction.

k "Official Traffic-Control Devices" shall mean all signs, signals, and markings placed or erected by the authority of the Three Affiliated Tribes/MHA Nation or officials having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

l "Operator" shall mean every person who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

m "Owner" means a person, other than a lienholder, in whose name the motor vehicle has been registered. If the ownership has been transferred, but the registration record has not been changed, "owner" means the person to whom the ownership has been transferred.

n "Pedestrian" shall mean any person on foot and includes mobility-impaired individuals who use wheelchairs or similar devices for mobility.

o "Person" shall mean individual man, woman, or child.

p "Police Officer" shall mean every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

q "Private Road or Driveway" means every track, road, or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

r "Reckless Driving" means with a willful or wanton disregard for safety or showing willful disregard of consequences when operating a motor vehicle.

s "Roadway" means the entire width between boundary lines of every road publicly maintained that is open to the use of the public for purposes of vehicular travel and of every road or track privately maintained within a mobile home park, trailer park, or campground containing five (5) or more lots for occupancy by mobile homes, travel trailers, or tents when any part is open for vehicular travel.

t "Serious Bodily Injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

u "Vehicle" shall include every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power (bicycles) or used exclusively upon stationary rails or tracks.

3-26-2 Operating a Motor Vehicle Under the Influence of Intoxicating Liquor or Controlled Substance

3-26-2.1 Operation of Motor Vehicle

A person may not drive any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use on this Reservation if any of the following apply:

a That person is under the influence of intoxicating liquor with a blood alcohol concentration of at least eight one hundredths (0.08) of one percent (1%) by weight at the time of the performance of a chemical test.

b That person is a habitual user of narcotic drugs or is under the influence of a narcotic drug.

c That person is under the influence of any controlled substance to a degree that renders him incapable of driving safely.

d That person is under the influence of a combination of intoxicating liquor and a controlled substance to a degree which renders that person incapable of driving safely.

3-26-2.2 Actual Physical Control

A person may not be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use on this Reservation if any of the following apply:

a That person is under the influence of intoxicating liquor with a blood alcohol concentration of at least eight one hundredths (0.08) of one percent (1%) by weight at the time of the performance of a chemical test.

b That person is a habitual user of narcotic drugs or is under the influence of a narcotic drug.

c That person is under the influence of any controlled substance to a degree that renders him incapable of driving safely.

d That person is under the influence of a combination of intoxicating liquor and a controlled substance to a degree which renders that person incapable of driving safely.

3-26-2.3 Penalties

A person convicted of violating this section is guilty of a misdemeanor and must be sentenced in accordance with this subsection:

a For the first (1st) offense, the sentence must include a maximum fine of five hundred ($500) dollars and or community service; an order for addiction evaluation by an appropriate tribal or state treatment program; and the court may order the suspension of driving privileges within the Reservation for up to thirty (30) days.

b For a second (2nd) offense within three (3) years, the sentence must include at least four (4) days imprisonment of which forty-eight (48) hours must be served consecutively, or five (5) days of community service; a maximum fine of seven hundred ($700) dollars; and an order for addiction evaluation by an appropriate tribal or state treatment program; and the court may order the suspension of driving privileges within the Reservation for up to six (6) months.

c For a third (3rd) offense within three (3) years, the sentence must include at least thirty (30) days imprisonment, of which forty-eight (48) hours must be served consecutively; a maximum fine of one thousand ($1000) dollars; and order for an addiction evaluation by an appropriate tribal or state treatment program; and the court may order the suspension of driving privileges within the Reservation for up to three (3) years.

d For a fourth (4th) offense or subsequent offense within five (5) years, the sentence must include imprisonment of not less than ninety (90) days or no more than one hundred eighty

(180) days, of which five (5) days must be served consecutively; a maximum fine of one thousand five hundred ($1500) dollars; and an order for an addiction evaluation by an appropriate tribal or state treatment program; and the court may order the suspension of driving privileges within the Reservation for up to three (3) years.

e A sentence of imprisonment may not be suspended except that a fine or a sentence of imprisonment may be suspended in any of the following instances:
   (i) Upon conviction of being in actual physical control of a vehicle.
   (ii) If the defendant is under the age of eighteen (18) years, a law enforcement officer shall administer the tests provided herein for driving under the influence of intoxicating liquor or controlled substances, except that said matter shall be referred to the juvenile court of the Three Affiliated Tribes for proper disposition thereto. The implied consent provisions contained herein shall be made applicable to anyone under the age of eighteen (18) years.

f If the penalty mandated by this section included imprisonment upon conviction of violation of this section, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo inpatient treatment at an appropriate licensed addition treatment program and the time spent by the defendant in the inpatient treatment must be credited as a portion of a sentence of imprisonment under this section.

g Any person who is ordered for treatment shall pay the costs of treatment or be responsible for treatment as they may qualify. The court shall cooperate with all treatment agencies to see that those who cannot afford treatment may obtain the same.

h If a person is ordered for treatment from the results of an evaluation and if such person shall willfully refuse treatment, their driving privileges shall be suspended until such treatment is obtained. Such an order of revocation shall only be issued after the person is granted all necessary due process notices and opportunities to be heard and present evidence regarding the proposed revocation.

3-26-2.4 Repeated Violations

In the event that the complaint does not include the allegation that, if convicted, such conviction would be the second (2^{nd}), third (3^{rd}), and/or fourth (4^{th}) violation as provided in this section, the court may take judicial notice of such fact if indicated by records of the Tribal court or make such finding based on other evidence and/or State Highway Department records.

3-26-2.5 Impounded Motor Vehicle

Upon conviction, the court may order the motor vehicle license plates, or the motor vehicle owned and operated by the offender at the time of the offense to be impounded by the Chief Law Enforcement Officer of the Three Affiliated Tribes, as is appropriate, for the duration of the period of suspension of the offender's driving privileges by the court. The impounded motor vehicle plates may be released, upon the order of the court, to a bona fide purchaser of the offender's motor vehicle, if that purchaser produces a new certificate of title issued by the Registrar of Motor Vehicles.

3-26-3 Interpretation of Chemical Tests

3-26-3.1 Blood Alcohol Level

Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual control of a motor vehicle while under the influence of intoxicating liquor, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his blood, breath, saliva, or urine is admissible. For the purpose of this section:

a A person having, at that time, seven-hundredths (0.07) of one percent (1%) or less by weight of alcohol in his blood is presumed not to be under the influence of intoxicating liquor.

b Evidence that there was at one time more than seven-hundredths (0.07) of one percent (1%) and less than eight one-hundredths (0.08) of one percent (1%) by weight of alcohol in the person's blood is relevant evidence, but it is not to be given prime facie effect in indicating whether the person was under the influence of intoxicating liquor.

c A person having, at that time, eight one-hundredths (0.08) of one percent (1%) or more by weight of alcohol in his blood shall be presumed to be under the influence of intoxicating liquor.

d Percent by weight of alcohol in the blood or blood alcohol concentration is based upon grams of alcohol per one hundred (100) cubic centimeters of blood or grams of alcohol per two hundred ten (210) liters of alveolar air or grams of alcohol per sixty-seven (67) cubic centimeters of urine.

e The results of the chemical analysis must be received in evidence, when it is shown that the sample was properly obtained, and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved in accordance with industry standards, and administered by an individual possessing a certificate of qualification to administer the test, provided that the test of a person's blood, breath, urine, or other bodily substance and the result thereof is further shown to have been performed according to the methods or with devices approved by the Tribe. Upon approval of the methods of devices or chemical analysis, or both, and techniques required to perform such a test and the persons qualified to administer them, the Tribal public safety administrator shall prepare and file a written record of such approval with the clerk of the Tribal court and shall include:

   (i) A quarterly register of the specific testing devices currently approved including serial number, location, and the date and results of the last inspection.

   (ii) A quarterly register of currently qualified and certified operators of said devices stating the certification and expiration dates.

   (iii) The operational check list and forms prescribing the methods and techniques in accordance with industry standards in using such devices during the administration of the tests.

   (iv) Copies of the above records certified by the clerk of the Tribal court shall be admitted as prima facie evidence of the matters stated herein.

f A certified copy of the analytical report of a blood analysis signed by a licensed toxicologist shall be accepted as prima facie evidence of the results of such a chemical analysis performed herein.

g Notwithstanding any statute or rule to the contrary, the defendant in any criminal proceeding may subpoena, without cost to the defendant, the person who conducted the chemical analysis, referred to in this section, to testify at the trial on the issue of the amount of alcohol, drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at the time of the alleged act. If the court cannot compulsorily compel the individual who conducted the chemical analysis to testify, the results of the analysis shall be inadmissible, but the Tribal prosecutor may use, and the court may consider, other evidence to establish the burden of proof requirements.

h A signed statement from the physician, qualified technician, chemist, nurse, or physician's assistant drawing the blood sample for testing as set forth in subsection (e) is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of such evidence may be required.

3-26-4 Implied Consent to Determine Concentration of Alcohol in Blood

3-26-4.1 Implied Consent

A person who operates a motor vehicle upon the highways within the exterior boundaries of the Fort Berthold Indian Reservation shall be deemed to have given consent subject to the provisions of this chapter to a chemical test, or tests, of his blood, breath, saliva, or urine for the purpose of determining the alcohol concentration of his blood. The test or tests shall be administered at the direction of a law enforcement officer only after placing such person, except persons mentioned in subsections 3-26-3.1(a) or (b), under arrest and informing him that he will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor or controlled substances. The arresting officer shall determine which of the aforesaid tests shall be used.

3-26-4.2 Consent of a Person Incapable of Refusal Not Withdrawn

Any person who is dead, unconscious, or in another condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection 3-26-4.1 and the test or tests may be given.

3-26-4.3 Person Qualified to Administer Test

Only a physician, qualified technician, chemist, nurse, or physician's assistant acting at the request of a law enforcement officer may draw blood for purposes of determining the alcohol concentration therein. This requirement shall not apply to the taking of breath, saliva, or urine specimens. Upon the request of the person who is being assessed, full information concerning the test or tests taken at the direction of the law enforcement officer shall be made available to him.

3-26-4.4 Revocation of Privilege to Drive Motor Vehicle upon Refusal to Submit to Chemical Testing

If a person under arrest refuses to submit to chemical testing, none shall be given, but the Tribal judge or magistrate judge upon receipt of a sworn report of the arresting law enforcement officer, within five (5) days after the refusal, showing that the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or controlled drugs, and that the person has refused to submit to the test or tests, may revoke his driving privileges to operate a motor vehicle upon this Reservation. The Tribal judge or magistrate judge may deny issuing the person a temporary driving privilege for a period of six (6) months after the date of the alleged violation. Such a revocation shall not occur until a hearing before the Tribal judge or magistrate judge has been provided which accords all necessary due process notices and opportunities to be heard and present evidence.

3-26-4.5 Proof of Refusal Admissible in any Civil or Criminal Action or Proceeding

If the person under arrest refuses to submit to the test or tests, proof of refusal is admissible in any civil or criminal action of proceedings arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor, controlled drugs, or a combination thereof.

3-26-4.6 Immunity from Liability

Any law enforcement officer, persons conducting the chemical analysis, and the person qualified to administer the test under subsection 3-26-4.3 shall be immune from civil liability and criminal prosecution unless said person(s) are proven to have acted in bad faith or with malicious intent.

3-26-5 Record of the Court

3-26-5.1 Registry of Convictions

The clerk of the Tribal court shall maintain a registry of all convictions under this chapter and shall maintain a registry to whom the court has issued temporary driving privileges. The clerk of the Tribal court shall also maintain a current list of all offenders whose Tribal privileges have been suspended or revoked and shall issue a weekly list of all such suspensions and revocations to all Tribally recognized law enforcement agencies. Such a list shall include the person's name, address, date of birth, driver's license number, date of suspension and/or revocation and the date eligible for reinstatement.

3-26-5.2 Penalty for allowing persons to drive if privileges are suspended or revoked under this chapter

Any person who willfully or knowingly allows a person to drive a motor vehicle while their Tribal driving privileges are suspended or revoked shall be guilty of an offense and shall be subject to a fine of two hundred fifty ($250) dollars or five (5) days in jail or both.

3-26-5.3 Penalty for driving while under suspension or revocation of driving privileges pursuant to this chapter

Any person who shall drive a motor vehicle while under suspension or revocation of driving privileges pursuant to this chapter who shall be convicted shall be sentenced as follows:

a The court may impose a sentence of six (6) months in jail or a fine of five hundred ($500) dollars or both, but the court must impose a minimum sentence of two hundred ($200) dollars and ten (10) days in jail. Said jail sentence must be served for forty-eight (48) consecutive hours.

b The court shall revoke Tribal driving privileges within the jurisdiction of the Reservation for an additional sixty (60) days of which no temporary driving privileges shall be issued.

3-26-6 Vehicular Manslaughter

3-26-6.1 Criminal Vehicular Manslaughter

An individual is guilty of criminal vehicular manslaughter if the individual commits an offense under subsection 3-26-2.1 and as a result the individual causes a death of another individual to occur, including the death of an unborn child, unless the individual who causes the death of the unborn child is the mother.

a If an individual commits a violation under this subsection, the violation is a Felony; the court shall impose at least three (3) years imprisonment.

b An individual may not be prosecuted and found guilty of this offense and an offense of sections 3-10-2, 3-10-3, or 3-10-4 if the conduct arises out of the same incident.

3-26-6.2 Criminal Vehicular Injury

An individual is guilty of criminal vehicular injury if the individual violates subsection 3-26-2.1 or equivalent ordinance and as a result that individual causes substantial bodily or serious bodily injury to another individual. It is a Class 1 Misdemeanor, and the court shall impose at least one (1) year of imprisonment. If the individual violates this section after having been previously convicted of a violation of subsections 3-26-2.1 or 3-26-7.3(b) or equivalent ordinance the court shall enhance the sentence to a Felony offense.

3-26-7 Duties in the Event of a Motor Vehicle Crash

3-26-7.1 Motor Vehicle Crash

The driver of any vehicle involved in a motor vehicle crash resulting in injury or the death of any person or damage to any vehicle which is driven or attended by any person shall give, upon request of the law enforcement officer:

a Driver's name, address;

b Driver's or Chauffeur's license;
c Motor vehicle insurance policy carrier; and
d Registration number of vehicle.

3-26-7.2 Scene of Vehicle Crash

The driver of any vehicle involved in a crash resulting in injury to or death of any person shall immediately stop or return with the vehicle as close as possible to the scene of the crash and in every event shall remain at the scene of the crash without obstructing traffic more than is necessary.

3-26-7.3 Requirements

Any person intentionally failing to comply with the requirements of this section under circumstances involving personal injury is guilty of a Class 1 Misdemeanor:

a Any person intentionally failing to comply with the requirements of this section under circumstances involving serious personal injury is guilty of a Felony offense.
b Any person intentionally failing to comply with the requirements of this section under circumstances involving death is guilty of a Felony offense.

3-26-8 Reckless Driving – Aggravated Reckless Driving – Penalty

3-26-8.1 Reckless Driving

A person shall be guilty of reckless driving if he drives a vehicle:

a Recklessly in disregard of the rights or safety of others; and
b Without due caution and circumspection and at a speed or in a manner to endanger or be likely to endanger any person or the property of another.

3-26-8.2 Penalties

a Reckless driving is a Class 4 Misdemeanor with a mandatory not less than eight (8) nor more than thirty (30) days in jail, a maximum fine of five hundred (500) dollars, or both such fine and imprisonment. Aggravated reckless driving is a Class 1 Misdemeanor with a mandatory not less than eight (8) days nor more than one (1) year in jail, a maximum fine of two thousand five hundred ($2500) dollars, or both such fine and imprisonment.

3-26-9 Fleeing or Attempting to Elude a Law Enforcement Officer – Penalty

3-26-9.1 Failure to Stop

A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who flees or attempts to elude, in any manner, a pursing police vehicle or law enforcement officer, when given a visual or audible signal to bring a vehicle to a stop, is guilty of:

a Class 1 Misdemeanor for a first offense and a Felony offense for a subsequent conviction.
b It is a Felony offense if the driver violates this section while willfully fleeing during or after the commission of a felony level offense of the Three Affiliated Tribes Tribal Code
c It is a Felony offense if, at any time during the flight or pursuit, the driver willfully operates the vehicle in a manner creating an inherent risk of death or serious bodily injury to any person.
d A signal complies with this section if the signal is perceptible to the driver and:
    (i) If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official law enforcement vehicle.
    (ii) If not given from a vehicle, the signal is given by hand, voice, emergency light or siren and the officer is in uniform or promptly displays the officer's badge of office

3-26-10 Refusing to Halt

3-26-10.1 Failure to Stop

A person who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing law enforcement officer, when given a visual or audible signal to stop, is guilty of a Class 2 Misdemeanor for a first or second offense and a Class 1 Misdemeanor for a subsequent offense. A signal to stop complies with this section if the signal is perceptible to the person and:

a If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official law enforcement vehicle. If not given from a vehicle, the signal is given by hand, voice, emergency light or siren and the officer is in uniform or promptly displays the officer's badge of office.