
Blackfeet Tribal Law and Order Code

Circa 1999

BLACKFEET NATION

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EXECUTIVE COMMITTEE

EARL OLD PERSON, CHAIRMAN

BERNARD ST. GODDARD, VICE-
CHAIRMAN

ROLAND KENNERLY, SECRETARY

ELAINE GUARDIPEE, TREASURER

BLACKFEET TRIBAL BUSINESS COUNCIL

EARL OLD PERSON

BERNARD ST. GODDARD

ROLAND KENNERLY

MARLENE BEAR-WAL [name incomplete
on photocopy]

TED WILLIAMS

ARCHIE ST. GODDARD

JIMMY ST. GODDARD

GABE GR [name incomplete on
photocopy]

CARL [name incomplete on photocopy]

February 11, 1998

EXCERPT

ORDINANCE #95 / DANGEROUS DRUGS - ZERO TOLERANCE:

Council members were advised that the documents approving ordinance #95 regarding Dangerous Drugs, state that "Zero Tolerance" will be enforced for a period of one year and also states that at the end of that one year period the council may, by a simple motion, extend the "Zero Tolerance". The one year period expired on January 9, 1998.

Marlene Walter made a motion to extend the "Zero Tolerance" period Within Ordinance #95 to Feb. 5, 2000. Motion seconded by Gabe Grant and carried unanimously.

CERTIFICATION

I hereby certify that the foregoing Excerpt is a true copy taken from the Minutes of the Blackfeet Tribal Business Council during a duly called, noticed, and convened Regular Session held the 5th day of February, 1998, with Six (6) members present to constitute a quorum.

(CORPORATE SEAL)

_____/s/
Roland Kennerly, Secretary
Blackfeet Tribal Business Council

OFFENSES INVOLVING DANGEROUS DRUGS

DEFINITIONS:

(1) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser of dangerous drugs; for the purpose of this section, includes a common or contract carrier, public warehouseman or employee of the carrier or warehouseman who possesses a dangerous drug in the usual course of his legal business or employment.

(2) "Compound" means any process in which two or more chemicals substances are mixed together to form a dangerous drug.

(3) "Conveyance" means anything that may be used for the purpose of

transporting dangerous drugs: such term includes, but is not limited to, motor vehicles, airplanes, boats, livestock, and any container.

(4) "Dangerous Drug" means any substance which is included in the Federal Schedules of Controlled Substances, found at Title 21 U.S.C. Section 812.

(5) "Forfeiture" means the legal process by which the Blackfeet Tribal Court System shall take control of any property used in the manufacture, transport, or sale of any dangerous drug.

(6) "Imitation Dangerous Drugs" means a substance that is not a dangerous drug, but that is expressly or impliedly represented to be a dangerous drug or to simulate the effect of a dangerous drug and the appearance of which, including the color, shape size and markings, could lead a reasonable person to believe that the substance is a dangerous drug.

(7) "Manufacture" means any act which would result in the creation of a dangerous drug.

(8) "Practitioner" means a physician, dentist, pharmacist, nurse, veterinarian, or other person

licensed, registered or otherwise permitted to distribute, dispense or administer dangerous drugs

in the course of a professional practice.

(9) "Prepare" means any act which would tend to make a dangerous drug ready for sale.

(10) "Prescription" means a written direction for the preparation, distribution, and therapeutic use of medicine.

(11) "Prescribed Medication" means a medication that is obtained through a prescription prepared by a practitioner.

(12) "Process" means any act or series of acts which is intended to produce a dangerous drug.

(13) "Possession" means the knowing control of a dangerous drug or drug paraphernalia for a sufficient period of time to be able to terminate control.

(14) "Ultimate User" means a person who lawfully possesses a dangerous drug for his/her own use, for the use of a member of his/her household, or for administration to an animal owned or controlled by him/her or by a member of his/her household.

(15) "Zero Tolerance" shall mean that possession or sale of any amount, no matter how small, of any dangerous drug within the exterior boundaries of the Blackfeet Reservation is a violation of this Ordinance.

CHAPTER 1

A. CRIMINAL SALE OF DANGEROUS DRUGS

(1) A person commits the offense of Criminal Sale of Dangerous Drugs if he/she sells, barter, exchanges, gives away, or offers to sell, barter, exchange or give away, or manufactures, prepares,

cultivates, compounds or processes any dangerous drug no matter how small of an amount.

(2) A person convicted of the Criminal Sale of Dangerous Drugs shall be imprisoned for a mandatory minimum term of six (6) months, not to be suspended or deferred, and shall be fined One Thousand Dollars (\$1,000.00). Fine to be paid after sentence term or served at the rate of Twenty-five Dollars (\$25.00)

(a) A person under the age of eighteen (18) years of age, convicted of a first violation under this subsection, shall be presumed to be entitled to a deferred imposition of a sentence of imprisonment, unless a finding of extraordinary circumstances is made which mandates a stronger sentence. Second and subsequent convictions of this offense shall require that the Court imprison the offender for a term of not less than three (3) months nor more than six (6) months.

(3) Practitioners and Agents lawfully acting in the usual course of their professional practice or business are exempt from this subsection.

B. CRIMINAL POSSESSION OF DANGEROUS DRUGS

(1) A person commits the offense of Criminal Possession of Dangerous Drugs if he/she possesses any amount of a dangerous drug.

(2) A person convicted of Criminal Possession of Dangerous Drugs shall be imprisoned for a mandatory term of not less than three (3) months nor more than six (6) months and shall be fined in an amount not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00). The minimum fine must be imposed as a condition of a suspended or deferred sentence. Fine to be paid of after sentence term or served at a rate of Twenty-Five Dollars (\$25.00) per day.

(a) A person under the age of eighteen (18) years of age, convicted of a first violation under this subsection, shall be presumed to be entitled to a deferred imposition of a sentence of imprisonment, unless a finding of extraordinary circumstances is made which mandates a stronger sentence. Second and subsequent convictions of this offense shall require that the Court imprison the offender for a term of not less than three (3) months nor more than

six (6) months.

(4) Ultimate Users, Practitioners, and Agents, acting in the lawful usual course of their professional practice or business are exempt from this subsection.

C. CRIMINAL POSSESSION OF A DANGEROUS DRUG WITH INTENT TO DELIVER OR SELL

(1) A person commits the offense of Criminal Possession with Intent to Deliver or Sell if he/she possesses with intent to sell any dangerous drug. No person commits the offense of Criminal Possession with Intent to Sell Marijuana unless he/she possesses fourteen (14) grams of marijuana or more.

(2) A Person convicted of the offense of Criminal Possession with Intent to Deliver or Sell shall be imprisoned for a mandatory term of one (1) year, not to be suspended or deferred, and shall be fined in an amount of one Thousand Dollars (\$1,000.00). Fine to be paid after sentence term or served at a rate of Twenty-five Dollars (\$25.00) per day.

(a) A person under the age of eighteen (18) years of age, convicted of a first violation under this subsection, shall be presumed to be entitled to a deferred imposition of a sentence of imprisonment, unless a finding of extraordinary circumstances is made which mandates a stronger sentence. Second and subsequent convictions of this offense shall require that the Court imprison the offender for a term of not less than three (3) months nor more than six (6) months.

(4) Practitioners and Agents lawfully acting in the usual course of their professional practice or business are exempt from this subsection.

D. FRAUDULENTLY OBTAINING DANGEROUS DRUGS

(1) A person commits the offense of Fraudulently Obtaining Dangerous Drugs if he/she obtains or attempts to obtain a dangerous drug by:

(a) fraud, deceit, misrepresentation, or subterfuge

- (b) the use of a forged, altered or fictitious prescription:
- (c) the use of a false name or address on a prescription:
- (d) the concealment of a material fact; or
- (e) the representation that he/she is a manufacturer, wholesaler, distributor, or dispenser of dangerous drugs.

(2) A person convicted of Fraudulently Obtaining Dangerous Drugs shall be imprisoned for a mandatory term of not less than three (3) months nor more than six (6) months and a fine of at least Five Hundred Dollars (\$500.00) but not more than One Thousand Dollars (\$1,000.00). Fine to be paid after sentence term or served at the rate of Twenty-five Dollars (\$25.00) per day.

(a) A person under-the age of eighteen (18) years of age, convicted of a first violation under this subsection, shall be presumed to be entitled to a deferred imposition of a sentence of imprisonment, unless a finding of extraordinary circumstances if made which mandates a stronger sentence. Second and subsequent convictions of this offense shall require that the Court imprison the offender for a term of not less than three (3) months nor more than six (6) months.

E. CRIMINAL SALE OF IMITATION DANGEROUS DRUGS

(1) A person commits the offense of Criminal Sale of Imitation Dangerous Drugs if he/she knowingly or purposely sells, barter, exchange, gives away, or offers to sell, barter, exchange or give away any imitation dangerous drugs.

(2) A person convicted of Criminal Sale of Imitation Dangerous Drugs shall be imprisoned for a mandatory term of not less than three (3) months nor more than six (6) months and fined in an amount of at least Five Hundred Dollars (\$500.00) but not more than One Thousand Dollars (\$1,000.00). Fine to be paid after sentence term or served at the rate of Twenty-five Dollars (\$25.00) per day. (a) A person under the age of eighteen (18) years of age, convicted of a first violation under this subsection, shall be presumed to be entitled to a deferred imposition of a sentence of imprisonment, unless a finding of extraordinary circumstances is made which mandates a stronger sentence. Second and subsequent convictions of this offense shall require

that the Court imprison the offender for a term of not less than three (3) months nor more than six (6) months.

F. CRIMINAL POSSESSION OF IMITATION DANGEROUS DRUGS WITH INTENT TO SELL

(1) A person commits the offense of Criminal Possession of Imitation Dangerous Drugs With Intent to Sell if he possesses with intent to sell any imitation dangerous drugs.

(2) A person convicted of Criminal Possession of Imitation Dangerous Drugs with Intent to Sell shall be imprisoned for a mandatory term of not less than three (3) Months nor more than six (6) months and fined not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00). Fine to be paid after sentence or served at the rate of Twenty-five Dollars (\$25.00) per day.

(a) A person under the age of eighteen (18) years of age, convicted of a first violation under this subsection, shall be presumed to be entitled to a deferred imposition of a sentence of imprisonment, unless a finding of extraordinary circumstances is made which mandates a stronger sentence. Second and subsequent convictions of this offense shall require that the Court imprison the offender for a term of not less than three (3) months nor more than six (6) months.

G. CRIMINAL POSSESSION OF TOXIC SUBSTANCES

(1) A person commits the offense of Criminal Possession of Toxic Substances if he/she inhales, ingests, or possesses with the intent to inhale or ingest, for the purpose of altering his/her mental state, any substance with toxic effects that is not manufactured for human consumption or inhalation; including, but not limited to, rubbing alcohol, gasoline, fingernail polish, paint and paint thinners, acetone, aerosol propellants, and chemical solvents.

(2) A person convicted of the offense of Criminal Possession of Toxic Substances shall be imprisoned for a mandatory term of not less than one (1) month nor more than three (3) months and be fined in an amount not less than Three Hundred Dollars (\$300.00) nor more than Seven Hundred Fifty Dollars (\$750.00). Fine to be paid after sentence or served at the rate of Twenty-five

Dollars (\$25.00) per day.

(a) A person under the age of eighteen (18) years of age, convicted of a first violation under this subsection, shall be presumed to be entitled to a deferred imposition of a sentence of imprisonment, unless a finding of extraordinary circumstances is made which mandates a stronger sentence. Second and subsequent convictions of this offense shall require that the Court imprison the offender for a term of not less than three (3) months nor more than six (6) months.

G-2. CRIMINAL SALE OF DANGEROUS DRUGS TO A MINOR

(1) A Person commits the offense of Criminal Sale of Dangerous Drugs to a Minor if he/she knowingly or should have known that the person receiving the Dangerous Drug, was under the age of Eighteen (18) years of age.

(a) Sale shall mean if he/she sells, barter, exchanges, gives away, or offers to sell, barter, exchange or give away, any amount of a Dangerous Drug.

(2) A person convicted of Criminal Sale of Dangerous Drugs to a Minor shall be imprisoned for a mandatory sentence of One (1) year and fined in the amount of One Thousand Dollars (\$1,000.00) not to be suspended or deferred. Fine to be paid after sentence term or served at the rate of Twenty-five Dollars (\$25.00) per day.

(a) A person under the age of eighteen (18) years of age, convicted of a first violation under this subsection, shall be presumed to be entitled to a deferred imposition of a sentence of imprisonment, unless a finding of extraordinary circumstances is made which mandates a stronger sentence. Second and subsequent convictions of this offense shall require that the Court imprison the offender for a term of not less than three (3) months nor more than six (6) months.

H. POSSESSION OF DRUG PARAPHERNALIA

(1) A person commits the offense of Possession of Drug Paraphernalia if he/she has any equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a dangerous drug. It includes but is not limited to

(a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant that is a dangerous drug or from which a dangerous drug can be derived.

(b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting or producing, processing, or preparing dangerous drugs.

(c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant that is a dangerous drug.

(d) Testing equipment used, intended for use in identifying or in analyzing the strength effectiveness, or purity of dangerous drugs.

(e) Scales and balances used, intended for use, or designed for use in weighing or measuring dangerous drugs.

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, dextrose, and lactose, used, intended for use, or designed for use in "cutting" dangerous drugs.

(g) 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.

(h) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding dangerous drugs.

(i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of dangerous drugs.

(j) Containers and other objects used, intended for use, or designed for use in storing or concealing dangerous drugs.

(k) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashishoil, or other dangerous drugs as defined by Title 21 U. S. C. Section 812, into the human body, such as:

- (i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (ii) water pipes or carburetor tubes and devices;
- (iii) smoking and carburetor masks;
- (iv) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
- (v) miniature cocaine spoons and cocaine vials;
- (vi) chamber, carburetor, electric, or air driven pipes;
- (vii) chillums
- (viii) bongs
- (ix) ice pipes or chillers;

(2) Words or phrases used in this part that are not defined by this Section have the meaning given their by the definitions contained in this Ordinance unless the usage clearly indicates a different intent.

(3) In determining whether an object is drug paraphernalia, the following shall be considered, in addition to all other logically relevant factors:

- (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 or dangerous drug.
- (c) The proximity of the object, in time and space, to a direct violation of this ordinance.
- (d) The proximity of the object to dangerous drugs.
- (e) The existence of any residue of dangerous drugs on the object.
- (f) Direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom he/she knows, or should reasonably know, intends to use the object to facilitate a violation of this Ordinance. The innocence of any owner or of anyone in control of the object as to a direct violation of this Ordinance does 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 use.

(i) National or local advertising concerning its use.

(j) The manner in which 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 objects to the total sales of the business enterprise.

(m) The existence and scope of legitimate uses for the object in the community.

(n) Expert testimony concerning its use.

(3) A person convicted of the offense of Possession of Drug paraphernalia shall be imprisoned for not less than forty-five (45) days nor more than six (6) months and shall be fined in an amount not less than Three Hundred Dollars (\$300.00) nor more than Seven Hundred Fifty Dollars (\$750.00). The minimum fine must be imposed as a condition of a suspended or deferred sentence. (Fine to be paid after sentence term or served at a rate of Twenty-five Dollars (\$25.00) per day.)

(a) A person under the age of eighteen (18) years of age, convicted of a first violation under this subsection, shall be presumed to be entitled to a deferred imposition of a sentence of imprisonment, unless a finding of extraordinary circumstances is made which mandates a stronger sentence. Second and subsequent convictions of this offense shall require that the Court imprison the offender for a term of not less than three (3) months nor more than six (6) months.

(4) Practitioners and Agents lawfully acting in the usual course of their professional practice or business are exempt from this subsection.

I. ALTERNATE SENTENCING AUTHORITY

A person convicted under subsections A, B, C, D, E, F, G, or H above, if shown to be an excessive or habitual user of dangerous drugs or toxic substances, either from the face of his/her record or by a presentation of evidence to the sentencing judge, may after the offender has served at least one (1) month of the sentence and at the discretion of the Court, be committed to the custody of any institution for rehabilitative treatment for a term of not less than three (3) months and then returned to complete the rest of the sentence. Payment for such treatment shall be arranged by the offender or his/her family and shall not be borne by the Blackfeet Nation or the Blackfeet Tribal Court.

I-2. SEIZURES AND FORFEITURE RELATED TO DANGEROUS DRUGS

(1) The following Property is subject to forfeiture to the Blackfeet Tribal Court:

- (a) All dangerous drugs seized pursuant to this Ordinance;
- (b) All money, raw materials, Products, and equipment of any kind that is used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any dangerous drug in violation of this Ordinance.
- (c) All property used or intended for use as container for anything listed in (a) or (b) above.
- (d) All conveyances which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of anything listed in (a) or (b) above.
- (e) All conveyances in which a dangerous drug is unlawfully kept, deposited, or concealed.
- (f) All books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of this Ordinance.
- (g) All equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, packaging; repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a dangerous drug.
- (h) Everything of value furnished or intended to be furnished in exchange for a dangerous drug in violation of this Ordinance; all proceeds traceable to such an exchange; and all Money, negotiable instruments, and securities used or intended to be used to facilitate any violation of this Ordinance.

(2) Exceptions to Forfeiture:

(a) No conveyance used by a 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 conveyance is a consenting party to or knowledgeable of a violation of this Ordinance.

(b) No conveyance is subject to forfeiture under this subsection because of any act or omission established by the owner of the conveyance to have been committed or omitted without his/her knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he/she neither had knowledge of nor consented to any violation of this Ordinance.

(3) When Property may be seized:

(a) A law enforcement officer who has probable cause to make an arrest for a violation of this Ordinance, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a dangerous drug or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a dangerous drug shall seize the conveyance so used or intended to be used. The Officer shall immediately deliver a conveyance that is seized to the Bureau of Indian Affairs, Law Enforcement Services, Blackfeet Indian Agency, Browning, Montana, to be held as evidence until forfeiture is declared or release is ordered.

(b) All property subject to forfeiture under this Ordinance, may be seized by a law enforcement officer under a search warrant issued by the Blackfeet Tribal Court. Seizure without a warrant may be made if:

(i) The seizure is made incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(ii) The property subject to seizure has been the subject of a prior judgment in favor of the Blackfeet Nation in a criminal proceeding or a forfeiture proceeding based on this Ordinance.

(iii) The law enforcement offices has probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(iv) The law enforcement officer has probable cause to believe that the property was issued or is intended to be used in violation of the criminal provisions of

this Ordinance.

(v) The law enforcement officer has probable cause to believe that the property will be removed from the Blackfeet Reservation jurisdiction if not seized at that time.

(4) Forfeiture of Property:

(a) Petition to Institute Forfeiture Proceedings:

(i) Any law enforcement officer or agency that seizes any property pursuant to this Ordinance shall, within forty-five (45) days, file a petition to institute forfeiture proceedings with the Clerk of the Blackfeet Tribal Court. The Clerk shall issue a summons at the request of the petitioning party who shall cause the same to be served upon all owners or claimants of the property.

(b) Answer to Allegations Concerning the Use of Property.

(i) Within twenty (20) days after the service of the petition and summons, the owner or claimant of the property shall file an answer to the allegations. No extension of time for filing the answer may be granted, and failure to answer within the specified time bars the owner or claimant from presenting any evidence at any subsequent hearing.

(c) Procedure Following Answer or Expiration of Time for Answering:

(i) There is a rebuttable presumption of forfeiture of property.

(ii) If an answer to the petition is not filed within twenty (20) days after the service of the petition and summons, the Court, upon motion, shall order the property forfeited to the Blackfeet Nation.

(Iii) If an answer is timely filed, the forfeiture proceeding shall be set for hearing, without a jury, not more than sixty (60) days after the answer is filed.

(d) Proof Required or Permitted at Hearing to Rebut the Presumption of Forfeiture.

(i) An owner of the property, who has an answer on file, must prove that the conveyance was not used for the purpose charged.

(Ii) An owner of the property, who has an answer on file, must prove, in the alternative, that the use of the property occurred without his/her knowledge or consent.

(Iii) A claimant of a secured interest in the property, who has an answer on file, must prove that his/her interest is bona fide and that it was created without the knowledge that the property was being used or was to be used for the purpose charged.

(e) Disposition of Property Following Hearing.

(i) If the Court finds that the property was not used for the purpose charged or that the property was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.

(Ii) If the Court finds that the property was used for the purpose charged and that the offender is a daughter or son of the owner, the property shall be forfeited.

(Iii) If the Court finds that the property was used for the purpose charged and, that is/was with the knowledge or consent of the owner, the property shall be disposed of as follows:

(A) If proper proof of his/her claim is presented at the hearing by the holder of a security interest, the Court shall order the property released to the holder of the security interest with all title, right and interest to the owner extinguished. If the value of the property is more than the security interest, the additional value shall be returned to the Blackfeet Tribal Court.

(B) If no claimant exists, and the Blackfeet Tribal Business Council wishes to retain the property for its official use, it may do so. If such property is not to be retained, it shall be sold as provided

in Chapter 14, Section 34(b) of the Blackfeet Law and Order Code, as amended.

(f) Disposition of Proceeds of Sales and or Fines.

(i) Whenever property is seized, forfeited and sold under the provisions of this Ordinance, the net proceeds of the sale must be remitted to the Treasurer of the Blackfeet Nation to be divided as follows:

(A) One-half to the Tribal Court Account.

(B) One-half to the Drug Enforcement Team to be used for drug enforcement purposes.

[Back to Top](#)