

CHIPPEWA CREE TRIBE LAW AND ORDER CODE

ROCKY BOY'S RESERVATION

1987

Dan R. Small - General Officer



CHIEF LITTLE BEAR

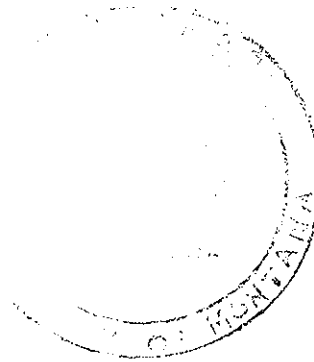


CHIEF ROCKY BOY

CHIPPEWA CREE TRIBE

LAW AND ORDER CODE

ROCKY BOY'S RESERVATION



Titles I through VII, Adopted November 3, 1986
by the Business Committee
Chippewa Cree Tribe
Rocky Boy's Reservation

Title I - General Provisions

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TITLE I.

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GENERAL PROVISIONS

Chapter 1. ESTABLISHING AUTHORITY AND COURTS

1.1 Constitutional Authority.

The Code of the Rocky Boy's Reservation is adopted pursuant to the authority vested in the Business Committee under Article VI, Section (1) of the Constitution of the Chippewa-Cree Indians of the Rocky Boy's Reservation.

1.2 Prior Inconsistent Ordinances and Resolutions Repealed.

Any and all Code provisions or ordinances inconsistent with, or in conflict with, or contrary to the spirit and purpose of this Code are hereby repealed and have no effect.

1.3 Amendments, Modifications, and Additions to the Code.

The Code may be amended by ordinances. The adoptions of Tribal ordinances which effect modifications, additions or deletions to this Code shall be codified and incorporated in a manner consistent with the numbering and organization of this Code.

1.4 Availability of Code.

Copies of this Code and any amendments shall be kept available for public inspection during regular business hours at the office of the Clerk of the Court. Copies will be made available at cost to anyone who requests the Code.

1.5 Authority to Make and Enforce Administrative Rules.

The Business Committee may appoint sub-committees to establish rules in areas such as court and resource administration. Rules made by each sub-committee will not be in effect until: (1) they have been posted in a public place and made available upon request for at least thirty (30) days; and (2) any comments made on the proposed rules are considered by the sub-committee.

Copies of all rules, whether proposed or in effect, shall be available for public inspection during regular business hours at the office of the Clerk of the Court, and the offices of the Business Committee.

1.6 Creation and Establishment of the Tribal Court.

The Rocky Boy's Tribal Court is established pursuant to Article XII and Article VI, Section 1(p) of the Constitution of the Chippewa-Cree Indians of the Rocky Boy's Reservation.

1.7 Composition of the Chippewa-Cree Appellate Court.

Upon the enactment of this Title, the Rocky Boy's Tribal Court shall provide, by Court rule, an appellate court for the review of the decisions of the Rocky Boy's Tribal Court.

1.8 Powers of the Court.

The Tribal Court shall be a court of general civil and criminal jurisdiction and shall hear appeals from administrative bodies as provided by the Code or Ordinances of the Chippewa-Cree Tribe.

1.9 Choice of Law.

The Tribal Court and appellate court, in all actions, shall apply the laws, ordinances, customs, and traditions of the Chippewa-Cree Tribe. In the absence of Tribal law in civil matters the Court may apply laws and regulations of the United States or the State of Montana. Where doubt arises as to customs and traditions of the Tribe, the Tribal Court may request the advice of recognized Tribal elders.

Chapter 2. JURISDICTION

2.1 Criminal Subject Matter Jurisdiction.

Jurisdiction of the Judicial Branch shall extend to any and all offenses which affect or concern the Tribe or its members when occurring within the exterior boundaries of the reservation or on any other land or property owned or controlled by the Tribe or adjacent, dependent Indian communities.

2.2 Civil Subject Matter Jurisdiction.

Jurisdiction of the Court shall extend to all civil actions arising in whole or in part within the exterior boundaries of the reservation or on any other land or property owned or controlled by the Tribe or adjacent, dependent Indian communities.

2.3 Personal Jurisdiction.

(1) The Court's criminal jurisdiction shall extend to any Indian, including Canadian Indians, who commits an offense enumerated within the Code of Offenses within the exterior boundaries of the Rocky Boy's Reservation.

(2) The Court's civil jurisdiction shall extend to any person within the exterior boundaries of the Rocky Boy's Reservation, and to persons who are parties in causes arising out of contacts with the reservation in matters in which the Court has subject matter jurisdiction.

Chapter 3. SOVEREIGNTY

3.1 Adoption By Reference Not a Waiver of Sovereign Power.

The adoption by the Business Committee of any law by reference into this Code shall not constitute a waiver or cession of any sovereign power or jurisdiction of the Tribe or in any way diminish such sovereign power or jurisdiction. The effect of adoption by reference shall be the addition of the adopted law to the law of the Chippewa-Cree Tribe.

3.2 Application of the Law of Other Jurisdictions.

Application of the law of other jurisdictions by the Tribal Court under the choice of law section of this Code shall not constitute a waiver or cession of any sovereign power or jurisdiction of the Tribe or in any way diminish such sovereign power.

3.3 Sovereign Immunity.

The Tribe shall be immune from suit in any civil action, and its officers and employees immune from suit for any liability arising from the performance of their official duties, except as required by federal law or the Chippewa-Cree Constitution and By-Laws, or as specifically waived by a resolution or ordinance of the Business Committee.

Chapter 4. LIMITATIONS ON ACTIONS

4.1 Civil Actions.

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

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

(2) Any other action must be commenced within three (3) years of the date the cause of action arose; except that any cause of action based on fraud or mistake must be commenced within three (3) years of the date the aggrieved party discovered or reasonably should have discovered the facts constituting the fraud or mistake.

4.2 Criminal Actions.

(1) A prosecution for any offense must be commenced within two (2) years of the occurrence of the offense.

(2) The period of limitations does not run during any period in which the offender is not physically located on the reservation or when a prosecution has been initiated in another jurisdiction against the offender for the same conduct.

Chapter 5. PRINCIPLES OF CONSTRUCTION

5.1 When Applied.

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

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

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

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

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

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

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

(7) In the resolution of any other issues of construction due regard shall be given to the underlying principles and purposes of this Code.

Chapter 6. CONTEMPT OF COURT

6.1 Power to Impose Penalty.

The Tribal Court and Court of Appeals have the power to penalize or punish anyone for contempt of the Court's judgment, orders or decrees and for conduct in or near the Court which shows disrespect for the Court.

6.2 Indirect Contempt.

Indirect contempt is the knowing failure to comply with an order of Court to do, or not do, something for the benefit of a party, or is an interference with the process of the Court. Indirect contempt includes but is not limited to:

(1) Disobedience of a subpoena, judgment or other order of the Court;

(2) Falsely presenting oneself as an officer, attorney or counsel of the Court;

(3) Detaining a witness, party to an action, or officer of the Court while the witness, party or officer is going to, remaining at or returning from a judicial proceeding;

(4) Any other interference with the process or proceeding of the Court; and

(5) Neglect or violation of duty by a person appointed or elected to perform a judicial service.

6.3 Direct Contempt.

Direct contempt is a disrespectful act done in the presence of the Court or near to the Court, which offends the dignity of the Court. Direct contempt includes but is not limited to the following:

(1) Disorderly, contemptuous or insulting behavior directed toward the Court during the course of a judicial proceeding;

(2) Conduct or speech which tends to interrupt the course of a trial or other judicial proceeding;

(3) Conduct which deceives the Court; and

(4) Disobedience of the Court during the course of a judicial proceeding.

6.4 Procedure.

(1) Contempt committed in the presence of the Court may be penalized by the Court without a hearing to determine the facts which constitute the contempt.

(2) Contempt allegedly committed outside the presence of the Court may be penalized only after a hearing which establishes the facts constituting the contempt.

6.5 Fine for Contempt of Court.

Contempt of Court may be penalized by a civil fine not to exceed \$500 for each instance of contempt.

Chapter 7.

DEFINITIONS

7.1 Signature, Written Instrument.

As used in this Code, "signature" shall mean any written signature, or any mark or thumbprint witnessed by the written signature of at least one (1) witness to the act. Wherever this Code shall refer to a "written instrument," that shall be construed to mean an instrument typed, printed, or written out in hand, and signed by the person who makes it.

7.2 Oath.

As used in this Code, "oath" shall mean "oath or affirmation," and "sworn" shall mean "sworn by oath or affirmation."

7.3 Court Day.

As used in this Code, "court day" shall mean any and every day of the week, except Saturday and Sunday and legal holidays, provided, that whenever a legal holiday shall fall on a Monday, the Saturday preceding that Monday shall also be a court day.

7.4 Enrolled Member.

As used in this Code, "enrolled member" shall mean any person validly and currently listed on the official membership roll of the Chippewa-Cree Tribe of Indians of the Rocky Boy's Reservation.

7.5 Jail, Juvenile Detention Facility, Detoxification Facility, Overnight Facility.

As used in this Code, "jail," "juvenile detention facility," "detoxification facility," and "overnight facility" shall mean whatever building or facilities are designated for those purposes by the Business Committee.

7.6 Person.

As used in this Code, a "person" may be a citizen of this or any recognized tribe, or any state or territory and includes, but is not limited to, natural persons, corporations, partnerships, trusts, unincorporated organizations, business associations and any other organizations or entities involved in private or commercial activity.

7.7 Status or Treaty Indians.

As used in this Code, "status Indians" or "treaty Indians" shall mean enrolled members of recognized Tribes.

7.8 Non-Status Indians.

As used in this Code, "non-status Indians" means Indians who are not enrolled members of a recognized Tribe.

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TITLE II
CIVIL PROCEDURE

Chapter 1. GENERAL PROVISIONS

1.1 Scope and Construction.

Except when different rules specifically apply, these rules shall govern the procedures of the Chippewa-Cree Tribal Courts, in all civil proceedings and shall be construed to secure a just, speedy, and inexpensive determination of every action.

Chapter 2. COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS

2.1 Commencement of Action - Service of Process.

Any action shall be commenced in the Tribal Court by the filing of a complaint with the Clerk, stating the names of the parties and the facts constituting a grievance for which relief is requested and signed by the Complainant and/or complaining witness.

2.2 Service of Process.

Upon the filing of the complaint, the Clerk shall issue a summons. Service of process shall consist of delivering to the other party a copy of the complaint along with a summons.

(1) The summons shall be signed by a Judge or the Clerk, be under the seal of the Tribal Court, contain the names of the parties, be directed to the defendant, and state the name and address of the plaintiff or his attorney or representative in the action, and that the defendant is required to answer the complaint within 20 days or a default judgment will be taken against him.

(2) Service may be made by any law enforcement officer or other person, not a party, 18 years of age or older.

(3) Service may be made on a party by delivering the summons and complaint to the party himself or to a person over 14 years old at the party's home or principal place of business, or an officer, managing agent, or employee, or partner of a person.

(4) If the party cannot be found within the exterior boundaries of the Rocky Boy's Reservation, service may be had by certified mail with delivery restricted to the party to be served.

(5) Where the Tribal Court has jurisdiction of the cause of action, service may be made anywhere in the United States.

(6) All papers filed with the Clerk of Court by a party shall be filed by the Clerk with the opposing party, or the opposing party's designated attorney or lay counsel. Service of all papers except the complaint may be made by first class mail, return receipt requested.

(7) Persons other than natural persons involved in private or commercial activity within the exterior boundaries of the reservation shall designate an agent resident within the boundaries of the reservation for service of process. Service of process upon the designated agent constitutes service upon the person.

(8) Service upon a state shall be upon the Secretary of State.

(9) Service upon any branch or agency of the federal government shall be upon the Secretary of State or the head of the agency.

2.3 Proof of Service.

The returned postal receipt or an affidavit of service by the person making the service, returned to the Clerk, shall constitute proof of service.

2.4 Time.

(1) Computation. In computing any period of time, the day on which the period is to begin shall not be counted and the last day of the period shall be counted; provided, however, that any time period under seven (7) days will not include Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday, or legal holiday will end on the next day which is not a Saturday, Sunday, or legal holiday.

(2) Service by Mail. Whenever service is accomplished by mail, any period of time will begin on the date of the postmark and three (3) days shall be added to the prescribed period of time, but such addition shall not cause Saturdays, Sundays, or legal holidays to be counted in the time period if they would not otherwise have been counted.

(3) Extension. The Court for good cause shown may extend the period of time within which an act may be done.

(4) Notice of Motions. Written motions and required notice of hearing on motions shall be served at least five (5) days prior to the time specified for hearing.

2.5 Pleadings.

There shall be a complaint and an answer. Responsive pleadings shall be allowed whenever there is a crossclaim or counterclaim.

(1) Complaint. A complaint sets forth a claim for relief and shall contain:

(a) A short, plain statement of the grounds upon which the Tribal Court's jurisdiction depends;

(b) A short, plain statement of the facts which show that the complainant is entitled to relief. A party may state more than one (1) statement of facts constituting a claim regardless of consistency;

(c) A demand for judgment for the relief to which the complainant feels entitled. A demand for relief can be in the alternative or for several types of relief.

(2) Answer. An answer to the complaint shall contain:

(a) A statement of which facts in the complaint the answering party denies and which facts the answering party admits. If the answering party does not know whether a fact in the complaint is true or false, the answering party shall state he has no knowledge of the truth or falsity of the claim. A statement of no knowledge of a fact shall be treated as a denial and leaves the fact in controversy.

(b) Defense. Defenses which are based on a different allegation of facts from that contained in the complaint should be affirmatively stated. Affirmative defenses include but are not limited to: assumption of the risk; contributory negligence; discharge in bankruptcy; fraud; illegality; payment of debt; and completion of contract.

(c) Counterclaim. The answering party may include in the answer any claim he may have against the original complainant.

(3) Crossclaim. A party may assert a claim against a co-party in a crossclaim. The crossclaim is a complaint filed against a co-party.

(4) Third Party Claim. A party may file a claim against a third person whom the party believes is or may be liable for a claim filed against that party.

2.6 Form of Pleadings.

(1) Caption. Every pleading shall contain a heading: the name of the Court, the title of the action, the Court file number (if known) and a designation as to the kind of pleading it is. All pleadings shall contain the names of the parties. The name of the first party on each side may be used on all pleadings except the complaint.

(2) Paragraphs. All claims or defenses shall be set forth in separate numbered paragraphs each of which shall be limited, as nearly as possible, to a single circumstance. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate paragraphs.

2.7 Time Period for Responsive Pleadings.

(1) An answer to a complaint shall be filed within twenty (20) days from the date of service of the complaint.

(2) Counterclaim. Any counterclaim the answering party has against the complainant at the filing of the answer must be included in the answer. If a counterclaim arises later, the Tribal Court may allow it to be filed if justice would be served.

(3) Crossclaims and third party claims must be filed within twenty (20) days of the filing of the complaint.

(4) Responsive pleadings must be filed within twenty (20) days of the filing of the preceding pleading.

2.8 Construction and Amendments to Pleadings.

(1) The Tribal Court shall construe all pleadings so as to do justice. Mistakenly designating a defense as a counterclaim or any other technical mistake shall not defeat the defense or claim.

(2) The Tribal Court shall freely allow amendments to the pleadings.

2.9 Motions to Dismiss or to Make More Definite.

Any motion to make a complaint more specific or to dismiss a claim must be made within five (5) days after receiving the complaint and prior to answering the complaint. The answer to the complaint shall not be due until twenty (20) days after the Court has ruled on the motion.

2.10 Real Party in Interest.

Every action must be pursued in the name of the person who has the complaint, except a personal representative or other person in a fiduciary relationship with the real party in interest, may sue in his own name without joining the party for whose benefit the action is maintained.

2.11 Representative.

When an infant or incompetent person is a party to an action, if that person does not have a general guardian, the Court shall appoint a representative for such person in the action.

2.12 Joinder of Parties.

Whenever possible, all persons interested in an action may be joined as parties in the action. Failure to join a party over whom the Court has no jurisdiction will not require the Court to dismiss the action unless it would be impossible to reach a just result without that party. Where a just result can be reached without joining such party, the Court shall take the party's absence into account to assure justice is done.

2.13 Intervenors.

A person may intervene in an action and become a party by filing a complaint in any action where that person has an interest in property which may be affected by the action or where a question of law or fact common to another claim of his may be litigated.

2.14 Substitution of Parties.

If a party dies or becomes incompetent or transfers his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

2.15 Discovery by Interrogatories.

A party may submit written interrogatories to any other party who shall answer them in writing, under oath, within twenty-five (25) days of when they are received.

2.16 Discovery by Deposition.

A party may take the oral deposition of an adverse party or non-party witness under oath after providing not less than ten (10) days notice, specifying the time and place where the deposition will occur.

The party requesting the deposition must hire an impartial person to record the questions and answers. The party answering the questions must read the record made and sign a statement attached to the record acknowledging that the record is completely accurate.

2.17 Discovery by Production, Entry, or Inspection.

A party may request another party to produce any documents or things in his custody or possession for inspection or copying or request permission to enter and inspect property reasonably related to the case, and the opposing party shall within twenty-five (25) days reply as to whether or not such will be allowed and, if not, why not. If the request is refused, the requesting party may move the court to compel production, inspection, or entry.

2.18 Scope of Discovery.

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, whether or not it would be admissible at trial, if it appears reasonably calculated to lead to the discovery of admissible evidence, except that discovery may not be had of the work product of a party's counselor or attorney.

2.19 Protective Order.

A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression or undue burden or expense, and the Court may order that the discovery cease or proceed only upon specified conditions.

2.20 Failure to Make Discovery.

If a party fails to respond or appear for discovery as provided in this rule, the opposing party may move for an order to compel the defaulting party to perform and the Court may award costs to the non-defaulting party. If a party fails to perform after being ordered to do so by the Court, the Court may, upon motion, order that a certain fact, claim, or defense be deemed proved, or strike part of a claim or defense, or dismiss or render a judgment by default against the non-complying party.

2.21 Use of Discovery.

Answers to interrogatories and depositions or facts discovered by production of documents, entry, or inspection may be used in a motion, hearing, or at trial to impeach or contradict the testimony of the person discovered, or by an adverse party for any purpose.

2.22 Deposition Used at Trial.

If a witness is unavailable to testify because of incompetence, absence from the jurisdiction by a distance greater than one hundred (100) miles (unless it appears that such absence was procured by the person offering the deposition), illness, death, or imprisonment, a sworn deposition may be offered instead of testimony of the witness who gave the deposition.

2.23 Transfer of Indian Child Welfare Proceedings From State Court.

(1) The Tribal Court, upon receipt of notice of hearing pending in state district court involving a child who is an enrolled or enrollable member of the Tribe, shall cause an investigation to be made and shall determine whether transfer to the Tribal Court is appropriate. If a determination is made that a transfer is appropriate, the Tribal Court shall file a petition for transfer to Tribal Court with the state district court within three (3) working days of the Tribal Court determination.

(2) Once jurisdiction is transferred from state court, the Children's Court Counselor shall file a petition for emergency placement of the child and proceed to an adjudicatory placement of the child in accordance with Title VI, Chapter 6 of this Code.

Chapter 3. TRIAL

3.1 Assigning Cases for Trial.

The Court shall establish rules for designating the time and judge before whom each action shall be heard.

3.2 Dismissal of Actions.

(1) Prior to a responsive pleading, the party making the claim may file a notice of dismissal and the Court shall dismiss his claim without prejudice. After a responsive pleading has been filed, a party may move the Court to dismiss his own claim and the Court shall do so either with or without prejudice as is just and proper given the stage of the proceedings. However, if a crossclaim or counterclaim has been filed against the moving party, the judge shall dismiss the claim only with the consent of the adverse party or only if it appears that the other party can pursue his claim independently without undue additional hardship. The Court may order a party moving to dismiss his own claim to pay the costs of the adverse party if the proceeding has progressed beyond the pleading stage, and may order payment of costs in other circumstances where such is deemed appropriate.

(2) A party against whom a claim has been made may move the Court to dismiss the claim of the adverse party upon any of the following grounds:

(a) Failure of the adverse party to pursue prosecution of his claim; or

(b) Failure of the adverse party to comply substantially with these rules; or

(c) Failure of the adverse party to comply with an order of the Court that affects the moving party's case; or

(d) Failure of the adverse party to establish a right to relief based on the facts and law presented. This motion is made at the close of the presentation of the adverse party's evidence and does not prejudice the moving party's own right to present evidence. Whenever dismissal appears proper based upon a failure to prove a claim, such dismissal shall be deemed an adjudication of the merits of the issue dismissed.

3.3 Subpoenas.

(1) Upon the request of a party, the Court may issue subpoenas for attendance of witnesses or production of documents or things.

(2) A person who has been properly served with a subpoena and fails to appear or produce may be held in contempt of Court.

(3) A person present in Court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena.

3.4 Rules of Evidence.

The Court shall establish Rules of Evidence, which shall apply in all proceedings.

3.5 Jury Trials.

(1) A party may request a trial by jury in all civil actions involving a claim or claims exceeding five hundred dollars (\$500) except domestic relations cases, cases involving adoptions, probate, minors, incompetence, hearings on court orders, contempt, or cases in the appellate court. The request for jury trial shall be filed, along with a fee to be set by Court rule, no less than twenty-five (25) days prior to the scheduled date of trial. Once a jury trial has been requested the request may not be withdrawn without the consent of all the parties.

(2) A judge may, upon his own motion, order the trial by a jury of any or all of the factual issues of a case regardless of whether or not the parties have requested it.

(3) A judge may, upon motion of any party or upon his own motion, find that some or all of the issues designated for jury trial are not properly triable to a jury, and order that no jury trial be held on those issues.

(4) A judge may hear and decide an issue or issues without a jury if either party to an issue fails to appear at trial, regardless of any request made for a jury trial on such issues.

3.6 Selection and Number of Jurors; Alternate.

There shall be six (6) jurors chosen to hear a case by the method determined by the Court in its rules, plus the Court may allow one (1) additional juror to be chosen as an alternate juror. In the event that an alternate juror is chosen, he shall be treated as a regular juror in all respects unless dismissed by direction of the Court prior to the jury's deliberations.

3.7 Examination of Jurors.

The Court shall permit the parties or the attorneys to conduct the examination of prospective jurors and may itself examine the jurors, according to such rules as the Court establishes.

3.8 Separation of the Jury.

Any time prior to their verdict when the jurors are allowed to leave the courtroom, the judge shall admonish them not to converse with or listen to any other person on the subject of the trial and further admonish them not to form or express an opinion

on the case until the case is submitted to the jury for their decision.

3.9 Improper Influence.

If improper influence is used to pressure a juror to reach an opinion during the course of the action, either party may move to discharge the jury and retry the action.

3.10 Instructions to the Jury.

At the close of the evidence or at such earlier time as the Court may direct, any party may file written requested instructions for the Court to give to the jury. The Court shall inform the parties or their counsel of the instructions it intends to give and hear objections and rule on them out of hearing of the jury.

3.11 Arguments in a Jury Trial.

Final arguments for the parties shall be made after the jury has been instructed.

3.12 Special Verdicts and Interrogatories.

The Court may require the jury to return their verdict in the form of specific findings on specified issues or may require the jury to return a general verdict accompanied by answers to questions related to the issues under consideration.

3.13 Deliberation of the Jury.

(1) Once the case is submitted to it, the jury shall retire to deliberate in private under the charge of an officer of the Court who will refrain from communicating with the jury except to inquire whether they have reached a verdict, and who shall prevent others from improperly communicating with the jury.

(2) The jury may take with them when deliberating any of the following:

- (a) The Court's instructions;
- (b) Papers or things received in evidence as exhibits;
- (c) Notes taken by the jurors themselves, but not notes taken by a non-juror.

(3) If after the jury retires there is some question on an instruction or other point of law or disagreement regarding the testimony, the jury may request additional instructions from the Court, which shall be given on the record after notice to the parties or their counsel.

3.14 Declaration of the Jury's Verdict.

When four (4) of the six (6) members of the jury agree on a verdict, they shall inform the officer who shall notify the Court. The Court shall reconvene and the jury foreman shall give the jury's written verdict to the Clerk of Court. The Clerk shall then read the verdict to the Court. The Court shall ask the jury foreman if that is the verdict.

Either party may request the Court to poll the jury members individually to determine if the verdict given is, in fact, the jury's verdict. The Court shall poll the jurors without the

presence of the parties or their counselors. If less than four (4) jurors agree to the verdict, the Court shall send the jury to deliberate again until a majority of four (4) is reached.

3.15 Non Jury Trials.

In cases tried without a jury, the Court shall make findings of fact and conclusions of law in support of its final judgment. These findings serve as a jury's verdict does in a jury trial.

3.16 Motion for a New Trial.

(1) Any party may petition for a new trial on any or all of the issues presented by serving a motion not later than ten (10) days after the entry of judgment, for any of the following grounds:

(a) Error or irregularity which prevented any party from receiving a fair trial; or

(b) Misconduct of the jury or jury members; or

(c) Accident or surprise, or newly discovered evidence which ordinary prudence could not have guarded against or produced at the trial; or

(d) Damages so excessive or inadequate that they appear to have been given under influence of passion or prejudice; or

(e) Insufficiency of the evidence to justify the verdict or other decision, or that is contrary to the law; or

(f) Error in law.

(2) A new trial shall not be granted on the basis of error or irregularity which was harmless in that it did not affect substantial justice.

(3) Parties may include memoranda or affidavits in support of their motions to which reply memoranda and affidavits shall be allowed.

3.17 Court Initiative.

The Court may, on its own initiative, not later than 10 days after entry of judgment, order a new trial on any grounds assertable by a party to the action, and shall specify the reasons for so ordering.

Chapter 4.

JUDGMENTS

4.1 Default.

(1) When a party against whom a complaint asking for money damages has been filed has been served with process and fails to appear to defend against the claim, the Court may enter a default judgment against the party.

(2) The Court may enter a default judgment only for money damages and only for the amount asked for in the complaint.

(3) The Court may for good cause shown, set aside a default judgment.

4.2 Summary Judgment.

Any time at least twenty (20) days after commencement of an action, any party may move the Court for summary judgment as to any or all of the issues presented in the case. Summary judgment shall be granted by the Court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Such motions, which shall be served not less than ten (10) days prior to the hearing on the motion, may be supported by affidavits, discovery, or memoranda, all of which must be made available to opposing parties at least two (2) days prior to the hearing.

4.3 Judgments After Full Trial.

(1) The Court shall enter judgment on all claims before it in an action. Each judgment shall order relief, either as the party requested or as the Court deems appropriate and shall consist of an order of the court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party.

(2) The Court may include the Court costs of the prevailing party in the damages award.

4.4 Entry of Judgment.

The judge in the action shall sign the judgment and file it with the Clerk of Court. A judgment is complete when it is so signed and filed.

4.5 Clerical Mistakes.

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time on its own initiative or on the motion of any party and after such notice as the Court may direct; mistakes may be corrected before an appeal is docketed in the appellate court, and thereafter while the appeal is pending with leave of the appellate court.

4.6 Death of a Party.

If a party dies after a verdict or decision has been reached upon any issue of fact before judgment, a judgment may nevertheless be entered thereon.

4.7 Proceedings to Enforce a Judgment.

Proceedings to enforce a judgment shall issue immediately upon the entry of the judgment, unless the Court stays the proceedings.

4.8 Satisfaction of Judgment.

A judgment is satisfied, in whole or in part, as to any or all of the judgment debtors when the owner thereof or his attorney executes under oath and files an acknowledgment of satisfaction specifying the amount paid and whether such payment is a full or partial satisfaction. A Judge may order the entry of satisfaction upon proof of payment and failure of the judgment

creditor to file a satisfaction. The Clerk shall file all satisfactions of judgment and note the amount thereof in the register of actions and the judgment docket. A judgment satisfied in whole has no continuing effect.

4.9 Time Limitation on Order of Judgment.

A partially satisfied judgment or unsatisfied judgment shall continue in effect for eight (8) years. An action to renew the judgment remaining unsatisfied may be maintained any time prior to the expiration of eight (8) years and will extend the period of limitations for one (1) additional eight (8) year period.

4.10 Stays of Proceedings to Enforce Judgment.

(1) The Court may stay proceedings to enforce a judgment where:

- (a) There has been filed a motion for a new trial; or
- (b) There has been filed an appeal of the judgment.

(2) The party filing the motion for a new trial or the party filing an appeal shall pay any bond required by the Court to stay the proceedings to enforce the judgment, except that the Tribe, or an officer or agency of the Tribe, shall not be required to give a bond.

(3) Where the stayed judgment grants or denies injunctive relief, the Court may suspend, modify, restore, or grant a temporary injunction during the stay.

(4) The appellate court itself may, upon appeal of a judgment, order a stay of proceedings to enforce a judgment, and may suspend, modify, restore, or grant a temporary injunction during the stay.

4.11 Execution of Judgments.

A judgment creditor shall petition the Court for a writ of execution to enforce his judgment within five (5) years of the entry of a judgment against a party or of final resolution of an appeal for which a stay of judgment had been ordered.

4.12 Property Subject to Writ of Execution.

All wages, money, goods, chattels, or other property, both real and personal belonging to the judgment debtor are subject to a writ of execution. All property not exempt under Section 4.13 of this Chapter and all property seized and held under attachment in an action are subject to execution.

4.13 Exemptions.

The following property is exempt from execution:

(1) The first three hundred fifty dollars (\$350) of the judgment debtor's wages if he is the head of a family, or the first two hundred dollars (\$200) of the judgment debtor's wages if he is not the head of a family, when it appears by the debtor's affidavit or otherwise that the income is necessary for his use or for the use of his family;

(2) Books, pictures, and musical instruments belonging to the judgment debtor not to exceed three hundred dollars (\$300) in value;

(3) Necessary wearing apparel belonging to the judgment debtor for the use of himself or his family; watches or jewelry not to exceed two hundred dollars (\$200) in value;

(4) The tools, implements, apparatus, motor vehicles, books, office furniture, business files, animals, laboratory, and any other article necessary to enable any person to carry on the trade, occupation, or profession by which that person habitually earns his living to the value of two thousand five hundred dollars (\$2,500), including sufficient quantity of food to support the animals, if any, for six (6) months;

(5) The following property belonging to the judgment debtor and in actual use or kept for use by and for his family: animals, household goods, furniture, and utensils to the value of \$1,200, including food sufficient to support the animals, if any, for six (6) months, and provisions actually provided for family use and necessary for the support of that person and family for six (6) months;

(6) All property of a public or municipal corporation;

(7) No article of property mentioned in this Section is exempt from execution issued on a judgment recovered for its price, and, in the event the article of property has been sold or exchanged for other property, the proceeds of the sale or the article for which it was exchanged is not exempt from execution.

4.14 Procedure for Identification.

After petitioning the Court for a writ of execution, the judgment creditor shall, if possible, identify property of the judgment debtor of value to satisfy the judgment. Such identification shall be made in a sworn affidavit, and shall not include exempt property.

The Court shall then order the judgment debtor to appear and identify under oath all of his exempt and non-exempt property, or at least property subject to the action. If a judgment debtor claims certain property is exempt, he must provide information to support his claim. Failure of the judgment debtor to appear and provide information shall be a Contempt of Court, and unless other interested parties (e.g., spouse, children, parents) come forward with information, no property of the judgment debtor will be held as exempt from execution. The judgment debtor must appear before the Court within five (5) working days of the order to appear, unless the Court is given good reasons for his failure to appear.

The Court may issue a writ of execution solely upon the affidavit of the judgment creditor, if some evidence is present to show that the property in fact belongs to the judgment debtor.

4.15 Substance of Writs.

Writs of execution may be against the property of the judgment debtor, another against his person, and a third for the delivery of the possession of real or personal property, including damages for withholding the property. Upon determination of what property is available for execution, the Court shall issue the necessary writ and order to the Rocky Boy

Police Department to carry out the orders in the writ; specifically, to seize as much non-exempt property belonging to the judgment debtor as reasonably appears necessary to pay the judgment amount. All writs shall direct the Police Department to proceed in the manner prescribed in the Court Rules.

4.16 Redemption from Sale.

At any time within six (6) months after the sale under this Rule, the judgment debtor may redeem his property, personal or real, from the purchaser thereof or from any subsequent successors in interest, by paying the amount such purchaser or successor paid for the property plus eight (8) percent interest, plus any expense actually incurred by the purchaser, such as taxes and insurance, to maintain the property.

4.17 Judgment Debtor's Property Owned with Another.

(1) If an individual judgment debtor owns property jointly with another, a judgment creditor may obtain a writ of execution and force a sale of the debtor's interest, provided the property is not exempt under Section 4.13. An individual who jointly owns property with a judgment debtor shall have the right to meet the highest bid at an auction sale, and thereby obtain the judgment debtor's interest.

(2) A partner's right in specific partnership property is exempt except on a claim against the partnership. If partnership property is attached for a partnership debt the partners or any of them or the representatives of a deceased partner may not claim an exemption for that property under this rule.

Chapter 5.

EXTRAORDINARY PROCEEDINGS OR REMEDIES

5.1 Expulsion and Exclusion of Non-Members From Tribal Lands.

(1) Who May Be Excluded. Any person who is not a member of the Chippewa-Cree Tribe may be excluded from the Rocky Boy's Indian Reservation.

(2) Grounds for Exclusion. Non-members of the Chippewa-Cree Tribe may be excluded on one (1) or more of the following grounds:

(a) Unauthorized prospecting, mining, timber cutting or other activity causing physical loss or damage to property on the Rocky Boy's Indian Reservation;

(b) Commission of a crime as defined by this Code, State or Federal laws;

(c) Unauthorized trading;

(d) Entering an area of the Rocky Boy's Reservation in violation of an order of the Tribal Business Committee and Agency Superintendent designating such area as closed because of fire hazard or any other reason;

(e) Absent a Tribal Court order granting custody, removing or attempting to remove any Chippewa-Cree minor from the Rocky Boy's Reservation without prior approval of the present custodian, legal guardian, or Tribal Business Committee;

(f) Posing a danger to life, health, morals or property of the Chippewa-Cree Tribe or any of its members.

(3) Exclusion After a Hearing. A non-member of the Chippewa-Cree Tribe may be excluded from the Rocky Boy's Indian Reservation, if it is determined at a hearing that he has committed any of the acts listed in Subsection (2) of this Section.

(a) Initiation of an Exclusion Hearing. Upon request of the Chairman or the Vice-Chairman of the Tribal Business Committee or upon its own motion, the Tribal Court shall set a time and a date within (10) to twenty (20) days for a hearing in which a person who is to be excluded may present his defense to the grounds named for exclusion.

(b) Notice of an Exclusion Hearing. Notice shall be served personally or by registered mail to the person to be excluded when the Tribal Court sets the hearing date. The notice shall state the reason for the proposed exclusion, the proposed duration of the exclusion, the person's right to present evidence in his defense, and the time, date and place of the hearing.

(c) Hearing: Order of Exclusion. After the hearing, or after the time set for the hearing if the person proposed for exclusion does not appear, the Tribal Court may order such person excluded from all or any part of the Rocky Boy's Indian Reservation for such time and on such condition as the Tribal Court sees fit to impose. All orders of exclusion shall contain a written statement of the reasons for exclusion and shall state the period for which the order shall apply.

(4) Exclusion Prior to a Hearing. Prior to having received a hearing, a non-member of the Chippewa-Cree Tribe may be ordered preliminarily excluded from the Rocky Boy's Indian Reservation by the Tribal Court for reasons as stated in Subsection (2)(f) of this Section. The Tribal Court shall order a Tribal law enforcement officer to remove the person and any property of such person from the Rocky Boy's Indian Reservation. The law enforcement officer shall use only such force as is reasonably necessary to effect the removal.

(5) Initiation of a Preliminary Exclusion Order. Upon request of the Chairman or the Vice-Chairman of the Tribal Business Committee, or upon its own motion, the Tribal Court may issue a Preliminary Exclusion Order. Concurrent with issuing the order the Tribal Court shall set a time and a date within three (3) to ten (10) days for a hearing in which the excluded person may appear in Tribal Court to present his defense to the grounds named for exclusion. The Preliminary Exclusion Order shall state the reasons for the exclusion, the duration of the Preliminary Exclusion, the duration of any other proposed exclusion, the excluded person's right to present evidence in his defense, and the time, date and place the hearing is to be held.

(6) Limitation on Preliminary Exclusion Orders. A Preliminary Exclusion Order is effective only until the day after the scheduled hearing.

(7) Notice. A copy of the Preliminary Exclusion Order shall be personally served on the excluded person by a law enforcement officer at the time that such officer enforces the order. The service of the order shall satisfy the notice requirement of Subsection 3(b) of this Section.

(8) Attendance at the Hearing. In all cases where a Preliminary Exclusion Order has been issued, the Chairman shall notify the excluded person of a place on the reservation boundary where he may re-enter in the company of a law enforcement officer for the purpose of attending the hearing before the Tribal Court. The Chairman shall order a Tribal law enforcement officer to accompany the excluded person while he is on the reservation coming to and leaving his hearing.

(9) Enforcement of Exclusion Orders. If any person, excluded from the Rocky Boy's Indian Reservation by the Tribal Court does not promptly obey the order, the Tribal Court shall refer the case to the appropriate Tribal official for action (for example to write a letter, or the Tribal Court may refer the matter to the United States Attorney. The Business Committee may petition the Court to order forcible removal of an excluded person or property. Forcible removal shall be executed by a Tribal law enforcement officer, and the officer shall use only such force as is reasonably necessary to effect the removal.

5.2 Temporary Restraining Order.

(1) A party may present to the Court an affidavit setting out specific facts indicating immediate and irreparable damage will result if the Court does not immediately restrain another party or other person from acting.

(2) The Court may grant the restraining order with or without notice to the person restrained.

(a) If the Court gives notice, the person to be restrained may present an affidavit also. The Court will then determine whether to grant the order.

(b) In any event, a hearing to determine whether the restraining order should continue must be set within fifteen (15) days of the issuance of the restraining order, otherwise the order expires after the fifteenth day.

(c) At the hearing, the parties may present testimony, cross examine witnesses, and present documentary evidence to the Court.

(d) Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

5.3 Injunction.

An injunction may be granted:

(1) When it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part

thereof, consists in enjoining the commission or continuance of some act complained of, either for a limited period or perpetually;

(2) When it appears from the pleadings or by affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the party seeking injunctive relief;

(3) When it appears during the litigation that either party is doing, or threatens, or is procuring or suffering to be done, some act in the violations of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual;

(4) In all other cases where an injunction would be proper in equity.

5.4 Extraordinary Writs.

Where no other plain, speedy, and adequate remedy exists, relief may be obtained by obtaining an extraordinary writ which may be granted for any one (1) of the following grounds:

(1) Where any person usurps, intrudes into, or unlawfully holds or exercises a public office or does or permits to be done any act which by law works a forfeiture of his office; or

(2) Where an inferior tribunal, board or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; or

(3) Where the relief sought is to compel any inferior tribunal, board or person to perform an act which the law specifically requires as a duty resulting from an office, trust or station or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully excluded by such inferior tribunal, board or person; or

(4) Where the relief sought is to arrest the proceedings of any tribunal, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, board or person.

5.5 Habeas Corpus.

(1) Relief by habeas corpus proceedings shall be granted whenever it appears to the Court that any person is unjustly imprisoned or otherwise restrained of his liberty. Upon the filing of the complaint the Court shall, unless it appears from such complaint or the showing of the plaintiff that he is not entitled to any relief, issue a writ directed to the defendant commanding him to bring the person alleged to be restrained before the Court at a specific time and place, at which time the Court shall proceed to hear the matter and render judgment accordingly. If the writ is not issued, the Court shall state its reason therefor in writing and file the same with the complaint, and shall deliver a copy thereof to the plaintiff.

(2) The defendant shall appear at the proper time and place with the person designated or show good cause for not doing so and must answer the complaint within the time allowed. The answer must state plainly whether he then has, or at any time has

had the person designated under his control and restraint, and if so, the cause thereof. If such person has been transferred, the defendant must state the fact, and to whom, and when, the transfer was made, and the reason or authority therefor.

(3) The person restrained may waive his right to be present at the hearing, in which case the writ shall be modified accordingly. Pending a determination of the matter the Court may place such person in the custody of such individual or individuals as may be deemed proper.

(4) In each case, the Court, upon determining the case, shall enter specific findings of fact and conclusions of law and judgment, in writing, and the same shall be made a part of the record in the case. If the Court finds in favor of the complainant, it shall enter a appropriate order with respect to judgment or sentence in the former proceedings and such further orders with respect to rearraignment, retrial, custody, bail, or discharge as the Court may deem just and proper in the case.

Chapter 6.

PROCEDURE FOR APPEALS

6.1 Who Can Request Judicial Review.

Any party adversely affected by a decision of the Trial Court in a civil case may appeal that decision to the Chippewa-Cree appellate court. An appeal of the Trial Court's decision in a criminal case shall proceed pursuant to the provisions contained in the Criminal Procedure Title of this Tribal Code.

6.2 Commencement of a Civil Appeal.

A party must commence an appeal within five (5) days of the date of the Trial Court's decision by filing with the Clerk of the Chippewa-Cree Court, an original and one (1) copy of a Request for Appeal. The appealing party shall pay a filing fee to be set by Court rule at the time the Request for Appeal is filed. Within twenty (20) days of requesting an appeal, the party must file two (2) copies of his brief in support of the appeal. The Clerk will notify the appellate court judges and the opposing parties within three (3) days of receiving the request for appeal. Upon receiving the copies of the brief in support of the appeal, the Clerk will distribute one (1) copy to the appellate court and the other copy to the opposing party.

6.3 What May Be Appealed.

Any final decision of the Trial Court may be appealed. However, the appellate court may refuse to hear a civil appeal if it determines that the appeal is without merit. The appellate court shall notify the parties that the appeal is refused no later than ten (10) days after the Request for Appeal is filed.

6.4 Opposing Party's Response.

The opposing party will have twenty (20) days from the date that the appealing party's brief is received to submit an opposing brief and to make any requests.

6.5 Consequences of Missing Filing Dates.

If a party does not file his request for appeal within the stated time limit, he loses his opportunity to appeal. If a party does not submit his brief within the stated time limits, the case will be decided without the brief. However, for good cause, the appellate court may extend any time limit set in this Chapter.

6.6 Availability of the Trial Transcript.

The Clerk shall keep the original trial transcript tape on file. A copy of the tape shall be provided to the appellate court, and upon the Court's request a transcribed copy of the trial transcript shall be provided. The parties to the appeal may listen to the trial transcript tape at the offices of the Court. Upon the request of a party, the Clerk will furnish that party at cost, with either a recorded copy or a transcribed copy of the transcript.

6.7 Court Cost and Fee Waivers.

If the appellate court requests a transcribed copy of the trial court transcript, the cost of transcribing the copy will be paid by the appealing party. The appellate court may waive or reduce the transcribing fee and the filing fee, or both, as justice requires.

6.8 When Oral Arguments Heard.

In a civil case, the appellate court may request oral arguments. Oral arguments will be scheduled within ten (10) days of such a request.

6.9 Procedures on Appeal.

Relying upon this Code, and custom and tradition, the appellate court may affirm, modify or reverse the Trial Court's determinations of issues of law. The appellate court shall remand a case to the Trial Court for further findings of fact and a new judgment if on review of the Trial Court's findings of fact, the appellate court determines that the Trial Court's findings of facts are not sufficient to support the Trial Court's judgment and are not sufficient to support any other judgment on appeal.

6.10 Unanimous Decision.

Judgment of the appellate court shall be by unanimous decision. The lower court's decision shall stand, where there is no unanimous judgment by the appellate court.

6.11 Written Decision.

The appellate court's decision must be in writing and contain the Trial Court's finding of facts and the appellate court's determinations of the issues of law. In addressing the issues of law, the decision shall state the Code sections, and customs or traditions upon which the appellate court based its determinations.

6.12 Time Limits.

The written decision in a civil case shall be issued within fifteen (15) days of when the last brief is submitted or of the completion of the oral arguments, whichever date is later.

TITLE III.

CRIMINAL PROCEDURE

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TITLE III
CRIMINAL PROCEDURE

Chapter 1. SHORT TITLE

1.1 Title.

 This Title shall be known as the Code of Criminal Procedure of the Chippewa-Cree Tribe of the Rocky Boy's Reservation.

Chapter 2. SCOPE AND CONSTRUCTION

2.1 Scope and Construction.

 (1) These rules shall govern the procedure in all criminal actions by the Chippewa-Cree Tribe of the Rocky Boy's Reservation.

 (2) The common law of the Chippewa and Cree peoples, as expressed in their customs and traditions, shall apply unless inconsistent with the Code or an ordinance of the Chippewa-Cree Tribe.

Chapter 3. INSTITUTION OF THE CRIMINAL PROCESS

3.1 Notice of Crime.

 (1) The notice to appear and complaint notifies the defendant as well as the Court that a criminal charge is being filed by the prosecutor against the defendant, the facts upon which the charge is based, and the witnesses who will testify to those facts.

 (2) The notice to appear and complaint must be in writing and include:

 (a) The name of the Court which has authority to hear the case;

 (b) The name of the defendant;

 (c) The crime committed, including the Code section;

 (d) The time, place and facts constituting the crime;

 (e) The witnesses who will testify to those facts. No additional witnesses may be added except for good cause and with the permission of the Court;

 (f) The signature of the prosecutor or an official of the Court designated by the prosecutor.

 (3) The complaint may charge more than one (1) offense and more than one (1) defendant, provided the offenses were connected in time and location or were part of a continuing criminal activity, and providing the defendants were involved together in one (1) or more of the crimes. Offenses and defendants may be joined or separated for good cause shown and by order of the Court.

 (4) The complaint shall be filed by the prosecutor with the Court. A copy of the complaint shall be served on the defendant at the first opportunity.

Chapter 4. OBTAINING THE PRESENCE OF THE DEFENDANT

4.1 Arrest.

(1) An arrest is taking a person into physical custody. Only reasonable or necessary force may be used.

(2) All arrests must be based on probable cause to believe the defendant has committed an offense or is now committing an offense.

(a) An arrest may be without a warrant of arrest, if the arrest is made during or immediately after the commission of the offense and existing circumstances require the immediate arrest of the defendant.

(b) An arrest may be based upon a warrant of arrest, signed by the judge.

(3) The police officer must inform the person arrested of the authority for the arrest and the reason for the arrest. The officer must provide the arrested person with a copy of the warrant of arrest, if one has been issued, and a copy of the complaint, if one has been filed.

Chapter 5. OBTAINING EVIDENCE OF THE CRIME

5.1 Interrogation.

Before the defendant may be asked any questions, the arresting officer, prosecutor or judge must inform the defendant of his right to remain silent; to have counsel, at defendant's own expense, or lay counsel, or someone else present during questioning; and that anything the defendant may say could be used against him at trial.

5.2 Search and Seizure.

(1) All searches must be based on probable cause to believe evidence of a crime may be found at the location to be searched.

(a) Police officers may search the person and the area immediately around the arrested person incident to a lawful arrest for the purposes of protecting the police officer or preventing the destruction of evidence.

(b) All other searches and seizures must be based on a search warrant which specifically describes evidence to be seized and the location to be searched. All search warrants must be signed and issued by a judge.

5.3 Discovery.

(1) Either the defendant or the prosecutor may make discovery of non-parties by subpoena or deposition.

(2) The defendant may, upon request, inspect and make copies of any physical evidence in the hands of the police or the prosecutor.

(3) The defendant shall also receive timely notice of any witnesses for the prosecution not named on the charging document.

6.1 Initial Appearance and Arraignment.

(1) Initial Appearance. The defendant must be taken to the nearest and most accessible judge, at the next court session or before seventy-two (72) hours have passed, whichever is first.

(a) The judge shall advise the defendant as follows:

(i) You have a right to be released on your personal recognizance or to bail;

(ii) You have the right to remain silent;

(iii) You have the right to have an attorney at your own expense, or to have lay counsel or someone else with you.

(b) If the defendant has not received a copy of the Notice of Crime, the judge shall furnish one. If a Notice of Crime has not been prepared, it shall be prepared, signed, and a copy given to the defendant at this time.

(c) If the defendant appeared before the Court upon a determination of probable cause made by a police officer only, the judge must review the determination of probable cause. If the judge rejects the determination, the defendant must be released. If the judge endorses the determination, the defendant must be arraigned as soon as possible at the next court session or before seventy-two (72) hours have passed, whichever is first.

(2) Arraignment.

(a) At arraignment the judge shall call upon the defendant to plead to the charge. The defendant shall plead guilty or not guilty. If the defendant refuses to plead or remains silent, a plea of not guilty shall be entered into the record.

(b) Before a plea may be accepted, the judge must:

(i) Ask the defendant to state his true name;

(ii) Determine if the defendant is under any disability;

(iii) Advise the defendant of the nature of the offense charged and the possible punishment;

(iv) Advise the defendant that he may plead at that time or may wait at least twenty-four (24) hours to plead and/or to obtain counsel or a friend;

(v) Advise the defendant that a plea of guilty waives defendant's rights to:

(1) A jury trial, if the offense charged carries a penalty of imprisonment;

(2) Compel witnesses to testify in defendant's behalf;

(3) Confront and cross-examine witnesses for the prosecution; and

(4) Testify or not to testify in the defendant's own behalf.

(c) If the judge determines the defendant's guilty plea is involuntary or without full understanding, he

must reject the guilty plea and enter a plea of not guilty into the record.

(d) If the arraignment is separated by more than twenty-four (24) hours, the Court shall reassess bail, if any, and again advise the defendant of his right to bail.

6.2 Bail.

The judge shall release the defendant on his own recognizance, or into the custody of another resident of the reservation, unless it appears to the judge that the defendant will not be present for trial. If it so appears, the judge shall set bail at no greater an amount than will tend to assure the appearance of the defendant at trial. Bail may be satisfied by money or other property of equal monetary value. All persons arrested and incarcerated shall be given the opportunity to make bail and be released.

6.3 Plea Agreements.

Any plea agreement between the defendant and the prosecutor shall be noticed by the judge in open court at the time the plea is made. The judge may accept the plea only in conjunction with the agreement surrounding the plea. If the judge rejects the agreement, then the judge must allow the defendant to withdraw the plea. Any plea so rejected is not admissible in any legal proceeding.

6.4 Pretrial Conference and Motion.

(1) (a) Prior to trial a conference shall be held, attended by the judge, the defendant, defendant's counsel or friend, the prosecutor and anyone invited by them with the judge's consent. The judge may set the trial date and any deadlines for motions or the completion of discovery.

(b) The Order and Memorandum of the Pretrial Conference shall contain the agreements reached by the parties and the orders of the judge given at the conference. The Order and Memorandum of the Pretrial Conference shall be the only record of the conference. No statements made by any participant at the conference shall be admissible in any proceeding.

(2) (a) The defense or prosecution may at any time prior to trial, by written motion, request the judge to take whatever action seems necessary in the interest of fairness. Any motion shall be filed with the judge and a copy served on the opposing party.

(b) The motion shall recite the defense, objection, or request made and state the reason for the motion. It shall state the action requested of the judge.

(c) Motions may request:

- (i) Substitution of the judge because of bias or other cause;
- (ii) Time to prepare;
- (iii) Continuance;
- (iv) A list of witnesses;

- (v) Suppression of a confession or of evidence claimed to have been illegally seized;
 - (vi) The production of evidence; or
 - (vii) Joinder or severance of offenses or defendants; but are not limited to those requests.
- (d) The judge shall rule on all motions as soon as possible, but always before instructing the jury or, in a trial by the judge, before rendering a verdict.

Chapter 7. TRIAL

7.1 Trial Procedure.

(1) If the defendant pleads not guilty, the judge shall set a trial date. The defendant shall be allowed a reasonable time to prepare for trial. The judge must insure there is no unreasonable or unnecessary delay infringing the defendant's right to a speedy trial.

(2) All trials shall be open to the public and must accord the defendant the rights to:

(a) Be present through the trial and to defend himself in person, by friend or by lay counsel or professional attorney at his own expense.

(b) Meet the witnesses for the prosecution face to face and to cross-examine them.

(c) Compulsory process through the power of the Court to obtain and develop the testimony of witnesses and to obtain physical evidence in his behalf.

(d) Testify or not testify. If the defendant does not testify, the prosecution may not comment upon the lack of testimony by the defendant, nor may it be construed against the defendant.

(3) In all trials, the defendant is presumed to be innocent, the burden of proof rests on the prosecution, and the prosecution must prove beyond a reasonable doubt each element of the crime charged and that the defendant committed the crime charged. In every trial before a jury, the judge shall charge the jury with the presumption of innocence of the defendant and the prosecution's burden of proof.

(4) A charge may be dismissed in the discretion of the judge at any time prior to verdict, upon the motion of the Court, the defendant or the prosecutor, and upon the order of the judge.

(a) If the order to dismiss is prior to trial, the judge must state whether the dismissal is for cause or not. If dismissed for cause, no new charge based on the same facts may be filed against the defendant. If dismissed without cause, new charges may be filed.

(b) If the order to dismiss is made at any time after the jury is impanelled and sworn, the judge need not determine whether the order to dismiss is for cause and in no instance shall a new charge based on the same facts be filed against the defendant.

(5) Objections and Motions at Trial.

(a) Either party may make motions throughout the course of the trial, all of which shall be oral unless otherwise directed by the judge. Both parties shall have the opportunity to state their positions on any motion made.

(b) The motions which can be made shall include, but are not limited to the following:

- (i) Motion for Exclusion of Witnesses;
- (ii) Motion to Exclude Evidence;
- (iii) Motion for Judicial Notice;
- (iv) Motion for Mistrial;
- (v) Motion for a New Trial;
- (vi) Motion for Directed Verdict.

7.2 Jury and Non-Jury Trial.

(1) The defendant shall request and receive trial either by jury or by the judge.

(a) Jury Trial.

(i) If defendant requests a jury trial, the jury shall be formed of at least six (6) enrolled members of the Chippewa-Cree Tribe residing on the Rocky Boy's Reservation, selected in the same manner as in civil actions.

(ii) The judge shall examine the jurors to determine if they are qualified to serve. The judge shall excuse any jurors:

- (1) Who are related to the defendant;
- (2) Who have formed an opinion about the case; or
- (3) Who, in the judge's discretion, should be dismissed.

(iii) The defendant and prosecutor each shall have as many challenges for cause as necessary and two (2) preemptory challenges.

(iv) The judge shall direct the jury as to the law in accordance with Rule 11(3), and in accordance with the jury instructions accepted by the judge from the parties.

(v) During the course of the trial, the jurors will not be permitted to discuss the trial with anyone but the other jurors. The jury may send written questions about the law to the judge for his answer. In the event the trial cannot be concluded in one day, the jurors shall be sequestered in suitable quarters.

(b) Trial by Judge. In cases tried without a jury, the judge shall make a general finding of guilty, or not guilty based upon the same interpretation of the law that would be given the jury, if the trial were a jury trial.

7.3 Verdict.

The verdict shall be by a majority in all cases.

(1) If the verdict is not guilty, the defendant shall be discharged, any bail posted shall be returned and any bail bond shall be exonerated. In no instance may the defendant be tried again on the same facts for the same offense.

(2) If the verdict is guilty, the defendant shall be sentenced at that time or within a reasonable time thereafter. The judge may require a pre-sentence investigation report or hearing before sentencing.

Chapter 8. POST-TRIAL PROCEDURE

8.1 Sentencing.

(1) Sentence shall be imposed without unreasonable delay. Pending sentence, the judge may commit the defendant to jail or continue or alter bail. Before imposing sentence, the judge shall afford counsel an opportunity to speak on behalf of the defendant and shall ask the defendant if he wishes to speak on his own behalf, to present any information which might lessen his punishment.

(2) A motion to withdraw a plea of guilty shall be made only before the defendant is sentenced. To correct manifest injustice, the judge may on his own motion, set aside the judgment of guilty prior to sentencing and permit the defendant to withdraw his plea.

(3) All persons convicted of any offense may be sentenced to imprisonment, fine, work, restitution or a combination of these punishments. However, no Section of this Code shall prohibit the judge from imposing any sentence deemed more appropriate than imprisonment, fines, restitution or work, under the circumstances of a particular case. Such sentences may include, but are not limited to: commitment to a rehabilitation or alcoholism program, or work for the benefit of the Tribe. Under no circumstances shall fines imposed exceed five hundred dollars (\$500) or imprisonment imposed exceed six (6) month for a single offense.

8.2 Deferred Sentences.

(1) Where a sentence has been imposed, the judge may, in his discretion, defer the imposition of the sentence and impose any reasonable restrictions or conditions during the period of deferred imposition.

(2) The judge may, in his discretion, revoke the suspension after giving the offender a hearing prior to the revocation.

(3) Where the Court has deferred the imposition of a sentence and the time period of the deferral has expired, upon motion of the judge, the defendant or the defendant's counsel or friend, the judge may allow the defendant to withdraw his plea of guilty or may strike the guilty verdict from the record and order that the charge be dismissed.

8.3 Parole.

(1) Any person, who has without misconduct served one-half (1/2) the sentence imposed by the judge, shall be eligible for parole.

(2) Anyone desiring parole, may apply to any judge, who will review the circumstances of the potential parolee, and

determine whether the person has served one-half (1/2) of the sentence and is not guilty of any misconduct.

If all requirements are met, the prisoner may be released on parole for the remainder of his sentence subject only to the terms and conditions he has, in writing, agreed to comply with.

(3) Violations. Any parolee who violates any provision of his parole shall be apprehended and confined to serve the remainder of the original sentence without diminishment for the time the person was free on parole.

8.4 Commutation of Sentence.

If a presiding judge is satisfied that justice will best be served by reducing a sentence, the judge may at any time reduce the amount of time of any sentence imposed upon a person, upon a showing of proof that during the period of the sentence the person served without misconduct and did satisfactory work.

Chapter 9. PROCEDURE FOR CRIMINAL APPEALS

9.1 Who Can Request Judicial Review.

Any party adversely affected by a decision of the Tribal Court in a criminal case may appeal that decision to the Court of Appeals. An appeal of the Tribal Court's decision in a civil case shall proceed pursuant to the provisions of the Civil Procedure Title of this Code.

9.2 Commencement of a Criminal Appeal.

A party must commence an appeal within twenty (20) days of the date of the Tribal Court's decision by filing with the Clerk of Court an original and one (1) copy of a Request for Appeal. No filing fee shall be required. Within twenty (20) days of requesting an appeal the party must file two (2) copies of his brief in support of the appeal. The Clerk will notify the Court of Appeals and the opposing parties within three (3) days of receiving the Request for Appeal. Upon receiving the copies of the brief in support of the appeal the Clerk will distribute one (1) copy to the Court of Appeals and one (1) copy to the opposing party.

9.3 What May Be Appealed.

Any final decision of the Tribal Court may be appealed. The Court of Appeals may not refuse to hear an appeal of a decision in a criminal case.

9.4 Opposing Party's Response.

The opposing party will have twenty (20) days from the date that the appealing party's brief is received to submit an opposing brief and to make any motions.

9.5 Consequences of Missing Filing Dates.

If a party does not file his request for appeal within the stated limit, he loses his opportunity to appeal. If a party

does not submit a brief within the stated limits, the case will be decided without the brief. However, for good cause the Court of Appeals may extend any time limit set in this Chapter.

9.6 Availability of the Trial Transcript.

The Clerk shall keep the original trial transcript tape on file. A copy of the tape shall be provided to the Court of Appeals, and upon the Court of Appeal's request a transcribed copy of the trial transcript shall be provided. The parties to the appeal may listen to the trial transcript tape at the Court building. Upon the request of a party the Clerk will furnish that party at cost, with either a recorded copy or a transcribed copy of the transcript.

9.7 Court Cost and Fee Waivers.

If the Court of Appeals requests a transcribed copy of the Tribal Court transcript, the cost of transcribing the copy will be paid by the Tribe.

9.8 When Oral Arguments Heard.

In a criminal case, the Court of Appeals or any party may request oral arguments. Oral arguments will be scheduled within ten (10) days of such a request.

9.9 Procedures on Appeal.

Relying upon this Code, and custom and tradition, the Court of Appeals may affirm, modify or reverse the Tribal Court's determinations of issues of law. If on review of the Tribal Court's findings of fact the Court of Appeals determines that the Tribal Court's findings of facts are not sufficient to support the Tribal Court's judgment and are not sufficient to support any other judgment on appeal, then the Court of Appeals shall remand a case to the Tribal Court for further findings of fact and a new judgment.

9.10 Unanimous Decision.

Judgment of the Court of Appeals shall be by unanimous decision. The lower court's decision shall stand where there is no unanimous judgment by the Court of Appeals.

9.11 Written Decision.

The Court of Appeal's decision must be in writing and contain the Tribal Court's findings of facts and the Court of Appeals' determinations of the issues of law. In addressing the issues of law, the decision shall state the Code sections, and customs or traditions upon which the Court of Appeals based its determinations.

9.12 Time Limits.

The written decision in a criminal case shall be issued within twenty (20) days of the date the last brief is submitted or of the completion of the oral arguments, whichever is later.

TITLE IV.

PUBLIC SECURITY

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TITLE IV.

PUBLIC SECURITY

Part One: Official Conduct

Chapter 1. ORGANIZATION AND PROCEDURES OF TRIBAL POLICE

1.1 Composition.

The Tribal police shall consist of the chief of police and such number of policemen as the Business Committee or an authorized subcommittee of the Business Committee designates.

1.2 Tribal Police Powers and Duties.

(1) It is the duty of the chief of police and all Tribal policemen to enforce the ordinances of the Tribe and preserve the peace, good order and quiet thereof.

(2) Tribal police have authority to enforce the Chippewa-Cree Tribal Code at all points within the Rocky Boy's Reservation.

(a) Arrest Powers.

(i) Tribal police may arrest and take into custody, with or without warrant or process, any person doing any act in violation of the Chippewa-Cree Tribal Code, and may bring him before the Tribal Court judge, or place him in jail to be dealt with according to law.

(ii) Tribal police, in execution of their powers and duties in arresting a person accused or suspected of crime, or in suppression of any riot or unlawful assembly, or in preventing the violation of any provision of the Chippewa-Cree Tribal Code, have the power to require the aid of any member of the Tribe. A person so called upon who refuses to obey, is subject to Section 7.4 of the Offenses Code.

(iii) Tribal police have authority to apprehend, arrest, and hold a person who is alleged to have committed a state, Tribal or federal crime, whether off or on the reservation, when such person is on the reservation.

(b) Tribal police have the authority to:

(i) Enforce any lawful order or ordinance of the Business Committee;

(ii) Enforce any lawful decree, order, or judgment of the Tribal Court;

(iii) Enforce traffic regulations and issue citations for violations of traffic ordinances;

(iv) Issue warnings for minor infractions of traffic ordinances.

(v) Serve summons as required by the Tribal Court;

(v) Prevent actual or impending unlawful threats of injury to any person or property.

(c) Tribal police may act in any legal and reasonable manner to prevent, reduce, and terminate criminal events or actions.

(3) Tribal police must:

(a) Administer the Chippewa-Cree Tribal Code provisions in a fair and impartial manner;

(b) Keep at least one (1) police officer immediately available at all times;

(c) Have readily available for Tribal Court and Business Committee inspection, information, or action, annual reports of crime statistics, expenses and budget requests, and reports on disposition of cases;

(d) Comply with Tribal Court orders, decrees, and judgments, and Business Committee orders and ordinances;

(e) Maintain Tribal police vehicles and equipment.

(f) Successfully complete training within one (1) year of their employment.

1.3 Restricted Application of State or Federal Law.

Tribal police may not apply state or federal laws in the enforcement of law and order on the reservation unless such application is expressly authorized by Chippewa-Cree Tribal Code provisions, or unless federal law preempts Tribal law as to the offenses involved.

1.4 Police Subject to Penalty for Unlawful Actions.

(1) A police officer who at any time willfully or negligently commits any of the offenses enumerated in the Chippewa-Cree Tribal Code is subject to the same punishment and penalties as any other person.

(2) A police officer who willfully or negligently commits any act resulting in personal or property injury to another is subject to the same civil liabilities as any other person on the reservation who commits such wrongful acts.

(3) Notwithstanding Subsection (1) above of this Section, a police officer can ignore traffic or other Code provisions when necessary to reasonably carry out his duties in the administration of justice.

1.5 Qualifications and Selection of Tribal Police Officers.

(1) All Tribal police officers shall be members of the Chippewa-Cree Tribe unless an agreement between the Tribe and the BIA provides otherwise. Selection of police officers shall be by the Business Committee unless an agreement between the Tribe and the BIA provides otherwise.

(2) Every person, before and after selection as a Tribal police officer, must:

(a) Be of good moral character;

(b) Be physically capable of carrying out the duties of a law enforcement officer, as determined by standards to be set by the Business Committee;

(c) Not have been convicted of a felony;

(d) Not have been convicted of any Tribal Code offense within the year prior to selection; and

(e) Be at least 18 years of age.

1.6 Use of Reasonable Force By Police Officers.

A police officer must not use unnecessary or unreasonable force in carrying out the apprehension, arrest, search, summons, interrogation, traffic supervision, and other procedures the police force is authorized or obligated to perform.

1.7 Search and Seizure By Tribal Police.

Arrests of any person or searches and seizures of any person, house, papers, and effects may not be conducted unless probable cause for such action exists or unless a proper warrant has been obtained according to the provisions of this Tribal Code.

1.8 Police Must Respect an Individual's Rights.

(1) Tribal police must, at all times while acting in their capacity as police officers, comply with the provisions of this Tribal Code and respect the rights of every individual on the reservation.

(2) A police officer must not, after having arrested any person, willfully delay taking such person before a Tribal judge for arraignment.

1.9 Tribal Police Officers in Tribal Court.

A police officer may not act at a Tribal Court hearing or trial in any capacity other than as witness or bailiff. A police officer may not act in a capacity as representative or legal counsel in any criminal, traffic, or civil action.

1.10 Mistreating Prisoners.

(1) A police officer or other person who is responsible for the care or custody of a prisoner must not willfully or knowingly:

- (a) Assault or otherwise injure a prisoner; or
- (b) Intimidate, threaten, endanger, or withhold reasonable necessities from a prisoner for the purpose of obtaining a confession from him, or for any other purpose; or
- (c) Violate any civil rights of a prisoner.

(2) A person convicted of the offense of mistreating a prisoner shall be removed from office and shall be subject to a fine not to exceed \$500 or imprisonment or labor not to exceed six months, or both, and shall be subject to punishment for any other Tribal Code offenses included in such wrongful action.

1.11 Termination of Employment as Tribal Police Officer.

(1) A police officer's employment may be terminated, following a termination hearing by the Business Committee, when:

- (a) The officer is convicted of committing any federally regulated felony offense;
- (b) The officer willfully and unreasonably disobeys an order of a superior officer or Tribal judge or the Business Committee.

(c) The officer is, at a Business Committee hearing, found guilty of drinking intoxicants or using unlawful drugs while in uniform or while on duty;

(d) The officer is determined by the Business Committee to be incapable, physically or mentally, to effectively perform police duties;

(e) The officer is determined by the Business Committee to have been grossly inefficient in the performance of his duties;

(f) The officer is continually absent, without justifiable excuse, from his job; or

(g) The officer, as evidenced by formal complaints against him, at a Business Committee hearing has been determined to be incapable of being able to administer justice in a fair and impartial manner.

(2) An officer terminated by the Business Committee shall have a right of appeal to the Tribal Court, but no Business Committee decision on termination may be revised except by the majority of all judges sitting as an appellate body following a review on the record of the Business Committee hearing or, if no such record exists, by a new hearing on the facts presented for and against that officer.

1.12 Arrest of Alleged Fugitives.

(1) Tribal police have authority to apprehend, arrest, and hold a person who is alleged to have committed a state, Tribal or federal crime off or on the reservation when such person is on the reservation.

(2) An alleged fugitive may not be turned over to state or federal authorities until after that person has been afforded a hearing in Tribal Court to determine whether probable cause exists as to the allegation of a crime by that person.

1.13 Domestic Violence.

Where probable cause exists to believe an offense of assault or assault and battery is being, or is about to be, committed between spouses, the Tribal police shall apprehend the persons involved and may (1) arrest either or both parties and charge them with the offense of Assault or Assault and Battery; or (2) bring the parties before a Tribal Court judge for a conciliation hearing

Part Two: Offenses

Chapter 2.

GENERAL PROVISIONS

2.1 General Purposes and Principles of Construction.

(1) The general purposes of the Offenses Code are:

(a) To give fair warning of the nature of the conduct declared to constitute an offense;

(b) To forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens harm to individual or public interests; and

(c) To safeguard conduct that is without fault from condemnation as criminal.

(2) All the provisions of the Offenses Code are to be construed to accomplish the Code's purposes and to promote justice.

2.2 Definitions of Mental States.

(1) Act: a person acts when he takes affirmative action or omits taking any action.

(2) Willfully: a person acts willfully if he acts with the purpose to do the act or achieve the result of his act.

(3) Knowingly: a person acts knowingly with respect to:

(a) his conduct when he is aware of his conduct;

(b) a circumstance when he is aware that the circumstance exists;

(c) the result of conduct when he is aware that it is highly probable that such result will be caused by the conduct;

(d) a fact when he is aware of the high probability of the fact's existence.

(4) Negligently: a person acts negligently when he acts without regard to the reasonably foreseeable consequences of his act, whether or not he actually is aware of the probable consequences of his act.

2.3 Penalties.

Offenses are divided into five (5) distinct classes:

(1) Class AA offenses, for which the maximum penalty is one (1) year imprisonment or a fine of five thousand dollars (\$5,000), or both;

(2) Class A offenses, for which the maximum penalty is six (6) months imprisonment or a fine of five hundred dollars (\$500), or both;

(3) Class B offenses, for which the maximum penalty is three (3) months imprisonment or a fine of three hundred dollars (\$300), or both;

(4) Class C offenses, for which the maximum penalty is thirty (30) days or a fine of one hundred dollars (\$100), or both; and

(5) Class D offenses, for which the maximum penalty is one hundred dollars (\$100).

2.4 Discretion of Court.

The Tribal Court has the discretion to order bonds, to levy penalties and legal costs, and to order and compel restitution of damages. For offenders who are minors, the Court may specify any disposition which is in the best interest of the minor.

2.5 Civil Actions Not Barred.

The Code of Offenses does not bar, suspend, or otherwise affect any right to or liability for damages, penalty, forfeiture, or other remedy authorized by law.

2.6 Defenses.

(1) Reasonable Force. Reasonable force in defense of person or property is an affirmative defense.

(2) Entrapment. It is a defense to an offense that a person's conduct was induced by a public servant or his agent for the purpose of obtaining evidence for the prosecution of that person.

(3) Coercion. It is a defense to an offense not involving death or serious bodily injury if a person commits the offense because he reasonably believes that he will suffer death or serious bodily injury unless he commits the offense.

(4) Intoxication. A person under the influence of alcohol or other drug is not absolved of criminal liability for his actions unless such condition is involuntarily produced.

(5) Ignorance or Mistake. Ignorance of a statute which makes conduct an offense is not a defense.

Chapter 3. INCHOATE OFFENSES

3.1 Attempt, Conspiracy, and Solicitation.

(1) A person who, with the required mental state, does any act toward the commission of an offense but fails to accomplish the offense commits a separate offense of Attempt, unless Attempt is part of the offense as defined in the particular Code section.

(2) A person who, with the required mental state, agrees with another to commit the offense commits the offense of Conspiracy if any party to the agreement commits any act in furtherance of the offense.

(3) A person who willfully solicits, requests, commands, induces, or aids another to commit an offense commits the offense of Solicitation.

(4) A person does not commit the offense of Attempt, Conspiracy, or Solicitation if:

(a) Prior to the commission of the offense, he gives timely warning to law enforcement authorities; or

(b) He otherwise makes a reasonable effort to prevent the commission of the offense.

(5) The penalties for Attempt, Conspiracy, or Solicitation must not exceed the maximum penalty provided for the related offense.

3.2 Responsibility.

(1) A person who knowingly causes another, regardless of their legal capacity or mental state, to commit the conduct of an offense, commits the offense so caused.

(2) A person who attempts to commit any of the major crimes under exclusive federal court jurisdiction, Title 18, U.S.C. § 1153, or who is an accessory after the fact to such crime shall upon conviction be sentenced by the Tribal Court to a confinement not to exceed six (6) months and/or a fine not to exceed \$500.

Chapter 4. OFFENSES AGAINST PERSONS

4.1 Deliberate Homicide.

A person who knowingly causes the death of another human being, commits the offense of Deliberate Homicide, a Class A offense.

4.2 Negligent Homicide.

A person who negligently causes the death of another human being, commits the offense of Negligent Homicide, a Class A offense.

4.3 Kidnapping.

A person who willfully or knowingly (1) abducts or detains another person against his will; or (2) abducts or detains a child less than eighteen (18) years old, without the consent of a parent or other person having lawful care or charge of the child, commits the offense of Kidnapping, a Class A offense.

4.4 Rape.

(1) A person who willfully or knowingly (a) forces or attempts to force sexual intercourse; or (b) assists in a forced or attempt at forced sexual intercourse upon another without their consent, commits the offense of Rape, a Class A offense.

(2) A person who willfully or knowingly has sexual intercourse with one who is not his spouse, who is under the age of sixteen (16), or who is a mentally incompetent person of any age notwithstanding consent, commits the offense of Rape, a Class A offense.

4.5 Sexual Assault.

(1) A person who knowingly subjects another, not his spouse, to any sexual contact without consent, commits the offense of Sexual Assault, a Class A offense.

(2) Consent is not effective if the victim is less than fourteen (14) years old and the offender is more than three (3) years older than the victim.

4.6 Incest.

(1) A person who knowingly has sexual intercourse with an ancestor, descendant, or a brother or sister of the whole or half blood commits the offense of Incest, a Class A offense.

(2) The relationships referred to include blood relationships without regard to legitimacy and relationships of parent and child by adoption.

4.7 Assault.

A person who knowingly threatens another with bodily injury verbally or by a threatening gesture of force, which creates a reasonable fear of bodily injury in that person commits the offense of Assault, a Class B offense.

4.8 Assault and Battery.

(1) A person who willfully strikes or otherwise inflicts bodily injury on another person commits the offense of Assault and Battery, a Class A offense.

(2) A person who willfully causes another to injure himself bodily commits the offense of Assault and Battery, a Class A offense.

4.9 Negligently Endangering Another Person.

A person who negligently engages in conduct which (1) threatens death or serious bodily injury to another; or (2) causes bodily injury to another commits the offense of Negligently Endangering Another Person, a Class B offense.

4.10 Causing or Aiding Suicide.

A person who willfully aids another to (1) commit suicide; (2) or attempt to commit suicide commits the offense of Causing or Aiding Suicide, a Class A offense.

Chapter 5. OFFENSES AGAINST CHILDREN AND DEPENDENTS

5.1 Child Molestation.

(1) A person who willfully engages in any indecent act with a child less than sixteen (16) years of age commits the offense of Child Molestation, a Class A offense.

(2) A person who willfully detains a child under the age of sixteen (16) with intent to engage in an indecent act commits the offense of Child Molestation, a Class A offense.

5.2 Child Abuse.

A person who willfully (1) commits acts of violence against a minor child; or (2) harmfully neglects the care of a minor child commits the offense of Child Abuse, a Class A offense.

5.3 Contributing to the Delinquency of a Minor.

A person who willfully encourages or contributes to the delinquency of any minor commits the offense of Contributing to the Delinquency of a Minor, a Class A offense.

For purposes of this Section, "delinquency" means commission of a delinquent act within the meaning of Title VI.

5.4 Possession of Intoxicating Substances by a Minor.

A person under the age of eighteen (18) years who knowingly (1) is under the influence of; or (2) possesses an alcoholic or other intoxicating substance commits the offense of Possession of Intoxicating Substances, a Class C offense.

5.5 Desertion and Non-Support of Dependents.

(1) A person who, because of gambling or misuse of alcohol or for any other reason, willfully or negligently deserts or refuses to support (a) a dependant child; (b) a dependant child born out of wedlock; or (c) any dependant person commits the

offense of Desertion and Non-Support of Dependents, a Class A offense.

(2) For purposes of this Section, the laws and custom of the Tribe determine the status of dependency.

(3) Financial ability may be considered as a mitigating or aggravating circumstance for sentencing.

(4) The Court may order the offender to pay maintenance in a reasonable amount and manner.

5.6 Failure to Send Children to School.

(1) A person who neglects or knowingly and without a legitimate reason refuses to send a minor child to school who (a) is under the age of sixteen (16); (b) has not completed the eighth (8th) grade; and (c) is under his charge or care, without a legitimate reason, commits the offense of Failure to Send Children to School, a Class C offense.

5.7 Violation of Curfew.

A person who knowingly permits a minor child in his charge to be on the streets, highways, or public premises of the Rocky Boy's Indian Reservation between the hours of 10:00 p.m. and 6:00 a.m. commencing Sunday evening through Friday morning, and between the hours of midnight and 6:00 a.m. commencing Friday evening through Sunday morning, without legitimate reason commits the offense of Violation of Curfew, a Class C offense.

Chapter 6. OFFENSES AGAINST LAW ENFORCEMENT

6.1 Escape.

(1) A person who willfully removes or attempts to remove himself from the lawful custody of a law enforcement officer commits the offense of Escape, a Class A offense.

(2) A person who willfully aids or attempts to aid another person to remove himself from lawful custody commits the offense of Escape, a Class A offense.

(3) A person who knowingly fails to return to official detention following leave granted for a specific purpose and a limited time (excluding probation, parole, or release on bail) commits the offense of Escape, a Class A offense.

6.2 Obstructing Justice.

A person who willfully hinders the apprehension, prosecution, conviction, or punishment of another for a crime commits the offense of Obstructing Justice, a Class B offense.

6.3 False Arrest.

A person who willfully or knowingly causes or makes the unlawful arrest, detention, or confinement of another person commits the offense of False Arrest, a Class B offense.

6.4 Refusing to Aid an Officer.

A person who knowingly or negligently refuses to aid a law enforcement officer upon his official request for assistance in

(1) arresting a person; (2) securing an apprehended person; or (3) conveying an apprehended person to the nearest place of confinement commits the offense of Refusing to Aid an Officer, a Class C offense.

Chapter 7. OFFENSES AGAINST PROPERTY

Subchapter A: Theft and Related Offenses.

7.1 Theft.

(1) A person who knowingly takes or exercises unauthorized control over property not his own with a purpose which will deprive the owner of the property commits the offense of Theft, a Class A offense unless the property is worth less than fifty dollars (\$50), in which case the Theft is a Class B offense.

(2) A person who knowingly (a) receives; (b) conceals; or (c) aids in the reception or concealment of property obtained by illegal means commits the offense of Theft.

(3) A person who (a) is in possession of a slaughtered beef; and (b) fails to produce the hide or fails to explain satisfactorily a defaced hide is presumed to have committed a Theft. This presumption is rebuttable.

7.2 Breaking and Entering.

A person who knowingly (1) enters or attempts to enter any building, dwelling, or other property without authorization; and (2) intends to commit any crime therein commits the offense of Breaking and Entering, a Class A offense.

7.3 Embezzlement.

A person who knowingly (1) appropriates to his own use property not his but in his lawful custody; and (2) intends to deprive the lawful owner of the property by such appropriation commits the offense of Embezzlement, a Class A offense. Embezzlement includes the misappropriation of a minor's funds in the custody of parents or guardians.

7.4 Extortion.

A person who willfully (1) intimidates or threatens another person; and (2) intends to obtain any property thereby commits the offense of Extortion, a Class A offense.

7.5 Fraud.

A person who knowingly misrepresents or deceives another in order to obtain property commits the offense of Fraud, a Class B offense.

7.6 Forgery and Counterfeiting.

A person who willfully executes, alters, counterfeits, or falsely signs any written instrument or currency to defraud commits the offense of Forgery, a Class A offense.

7.7 Issuing a Bad Check.

A person who (1) knowingly makes or delivers a check, draft or other written order, or verbally makes an order upon any bank or depository for payment of money; and (2) knows that there are insufficient funds or that the bank or depository will not pay or credit the check, draft or order commits the offense of Issuing a Bad Check, a Class C offense.

Subchapter B: Conduct Violating Property Protection.

7.8 Unauthorized Use of Property.

A person who knowingly (1) uses any property not his own; or (2) operates a vehicle not his own without the permission of the owner commits the offense of Unauthorized Use of Property, a Class C offense.

7.9 Malicious Mischief.

A person who willfully disturbs, injures, destroys, or defaces any property not his own commits the offense of Malicious Mischief, a Class B offense.

7.10 Injuring Public Property.

A person who willfully disturbs, injures, destroys, or defaces any public building or other property of the Tribe, state, or the United States Government commits the offense of Injuring Public Property, a Class B offense.

7.11 Maintaining a Public Nuisance.

A person who knowingly causes or negligently permits his property to fall into a condition which could injure or endanger the safety, health, comfort, or property of another commits the offense of Maintaining a Public Nuisance, a Class C offense. The Court may order removal or correction of the nuisance.

7.12 Storing Dangerous Discarded Container.

A person who knowingly possesses an unused chest, icebox, refrigerator, or other container (1) which has a door with an automatic latch or lock which cannot be readily opened from the inside; and (2) from which the danger of entrapment has not been eliminated by removal of the door, lock, or latch, or by other means commits the offense of Storing Dangerous Discarded Containers, a Class C offense. The person must remedy the situation at his own expense.

7.13 Criminal Trespass--Buildings.

(1) A person who knowingly and unlawfully (a) enters; or (b) remains in a building commits the offense of Criminal Trespass to Buildings, a Class B offense.

(2) For purposes of this Section "unlawfully" means without license, privilege, or other proper authorization.

7.14 Cutting Fence or Opening Gates.

A person who willfully (1) leaves open any gate of another; or (2) tears down, carries away, or destroys any part of a fence of another commits the offense of Cutting Fence or the offense of Opening Gates, Class D offenses.

7.15 Arson.

A person who, by means of fire or explosions, knowingly or negligently (1) damages or destroys an occupied structure which is property of another without consent; or (2) places another person in danger of death commits the offense of arson, a Class A offense.

Subchapter C: Conduct Violating Animal Property Protection.

7.16 Cruelty to Animals.

A person who knowingly or negligently mistreats any animal which is his own or in his custody commits the offense of Cruelty to Animals, a Class C offense.

7.17 Permitting Domestic Pets to Roam.

A person who knowingly allows a diseased or dangerous dog or other animal which is his own or in his custody, to roam at large or wander through populated areas commits the offense of Permitting Domestic Pets to Roam, a Class D offense.

Chapter 8. OFFENSES AGAINST PUBLIC ORDER

8.1 Disorderly Conduct.

(1) A person who knowingly or negligently (a) engages in fighting or violence; (b) makes unreasonable noise; (c) disrupts public or religious assembly; (d) uses abusive language in a public place; or (e) creates a hazardous, offensive, or disruptive condition in a public place which serves no legitimate purpose commits the offense of Disorderly Conduct, a Class B offense.

(2) An individual convicted of Disorderly Conduct for the first time is subject to a maximum penalty of thirty (30) days imprisonment or a fine of one hundred dollars (\$100), or both.

8.2 Firing a Weapon.

(1) A person who knowingly fires a weapon within a settled community on the Rocky Boy's Indian Reservation at any time commits the offense of Firing a Weapon, a Class B offense.

(2) A person who knowingly fires a weapon in any place within the boundaries of the reservation with careless disregard for human life commits the offense of Firing a Weapon, a Class B offense.

8.3 Carrying a Concealed Weapon.

A person who knowingly carries a dangerous weapon concealed upon his person without (1) a permit signed by a Tribal Court; or (2) a license issued by the Tribal Council commits the offense of Carrying a Concealed Weapon, a Class B offense.

8.4 Public Drunkenness or Drug Intoxication.

(1) A person who knowingly or negligently appears in a public place under the influence of alcohol, drugs, or other substance not sanctioned for ceremonial use by the Tribe and (a) is endangering himself, others, or property; or (b) is disturbing others commits the offense of Public Drunkenness or Drug Intoxication, a Class C offense.

(2) The Court may order the offender upon conviction to undertake and complete any available alcoholic or drug abuse program in lieu of penalties. The Court may reinstate the penalty if the offender fails to follow the order for treatment.

8.5 Driving While Under the Influence of Alcohol or Drugs.

(1) A person who while under the influence of alcohol or drugs knowingly or negligently drives or is in actual control of a motor vehicle upon the roads or highways within the boundaries of the reservation commits the offense of Driving While Under the Influence of Alcohol or Drugs, a Class A offense.

(2) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not give rise to any presumption that the person was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol. Such presumption is rebuttable.

8.6 Littering.

A person who knowingly disposes of any garbage or other form of waste except in disposal areas designated by the Tribe commits the offense of Littering, a Class D offense.

Chapter 9. OFFENSES AGAINST PUBLIC ADMINISTRATION

9.1 Threat or Intimidation.

A person who willfully (1) threatens harm to another person; and (2) intends thereby to influence a public servant, official, or voter to violate a public duty commits the offense of Threat or Intimidation, a Class A offense.

9.2 Bribery.

(1) A person who knowingly (a) gives; (b) offers to give; or (c) agrees to give a benefit to another and intends thereby to influence a public official's performance of his duty commits the offense of Bribery, a Class B offense.

(2) A public official who knowingly accepts, solicits, or agrees to accept a benefit for a promise which influences his performance of his duty commits the offense of Bribery, a Class B offense.

9.3 Criminal Contempt of Court.

A person who knowingly (1) fails to comply with an order of the Court; (2) interferes with the process of the Court; or (3) offends the dignity of the Court by a disrespectful act done in or near the presence of the Court commits the offense of Criminal Contempt of Court, a Class A offense.

9.4 Perjury.

A person who willfully (1) makes a false statement or affidavit under oath or affirmation before an official proceeding; or (2) causes or procures another to make such a false statement commits the offense of Perjury, a Class B offense.

9.5 Destruction of Evidence.

A person who willfully (1) destroys or withholds evidence; and (2) intends to prevent the use of that evidence in an official proceeding commits the offense of Destruction of Evidence, a Class B offense.

9.6 Disposing of Property of an Estate.

A person who sells, exchanges, or otherwise disposes of property in an estate, without proper authority, commits the offense of Disposing of Property of an Estate, a Class B offense.

Chapter 10. VIOLATIONS ENDANGERING FAMILY AND PUBLIC DECENCY

10.1 Prostitution.

(1) A person who knowingly engages in providing or procuring sexual activity as a business commits the offense of Prostitution, a Class C offense.

(2) A person who knowingly keeps, maintains, rents, or leases property for the business of sexual activity commits the offense of Prostitution, a Class C offense.

10.2 Indecent Exposure.

A person who willfully exposes his genitals or other intimate parts in public if his conduct is likely to cause affront or alarm commits the offense of Indecent Exposure, a Class C offense.

10.3 Exposing to Infectious Disease.

(1) A person inflicted with syphilis, gonorrhea, tuberculosis, or other dangerous communicable disease who knowingly exposes another to infection commits the offense of Exposing to Infectious Disease, a Class B offense.

(2) The Court has the power to order and compel a person to submit to medical examination and necessary treatment if it reasonably believes he is afflicted with a dangerous communicable disease.

10.4 Malicious Gossip.

A person who willfully defames the character of another with written or spoken statements which are false and malicious commits the offense of Malicious Gossip, a Class C offense.

10.5 Possession of Dangerous Drugs.

A person who knowingly produces, sells, barter, gives, or has possession of a dangerous drug commits the offense of Possession of Dangerous Drugs, a Class AA offense.

10.6 Adulteration of Food and Drink.

A person who knowingly manufactures, sells, keeps for sale, or offers for sale any food, drug, or drink which contains any harmful substance commits the offense of Adulteration of Food or Drink, a Class B offense.

Part Three: Traffic Code

Chapter 11 TRAFFIC OFFENSES

11.1 Territory.

This Traffic Code covers any traffic violation herein listed which occurs within the exterior boundaries of the Rocky Boy's Indian Reservation.

11.2 Power.

The Tribal police have the power to control and supervise all public roadways within the exterior boundaries of the Rocky Boy's Indian Reservation, and to issue warnings for minor infractions.

11.3 Citations.

The Tribal police may issue citations appropriate for any violation of the Traffic Code, ordering the cited party to appear before any Tribal Court of the Rocky Boy's Indian Reservation at a reasonable time.

11.3.1 Use of Radar - Evidence Admissible.

The Tribal police are authorized to employ the use of radio microwaves or other equivalent electrical device for the purpose of measuring the speed of motor vehicles within the Reservation. The results of such measurements shall be admissible as evidence of the speed of a motor vehicle in Tribal Court in any legal proceeding where the speed of such motor vehicle is at issue.

11.3.2 Arrest Without Warrant in Radar Cases.

(1) The driver of any motor vehicle determined to be traveling in excess of the posted speed limit may be arrested without a warrant, provided the arresting officer is in uniform or displays his badge of authority and has:

(a) Observed the recording of the speed of the vehicle by radio microwaves or other equivalent electrical device; or

(b) Received, from the officer who has observed the speed of the vehicle recorded by such device, a radio message giving the license number or other sufficient identification of the vehicle and the recorded speed, dispatched immediately after the speed of the vehicle was recorded.

(2) The arrest without warrant of any such driver must be made immediately after such observation or radio message and as a result of uninterrupted pursuit.

11.4 Class D Offenses.

Unless otherwise designated, all offenses of the Traffic Code are Class D offenses.

11.5 Court Discretion.

The Tribal Court may suspend or revoke driving privileges for a violation of the Traffic Code.

11.6 Contempt of Court for Failure to Pay Traffic Fines.

If an offender fails to pay a fine imposed under this Chapter, the Court may hold the offender in Contempt of Court for which the maximum penalty is confinement not to exceed thirty (30) days or payment of the original fine.

11.7 Arrest.

The Tribal police may arrest any person without warrant for any violation of the Traffic Code which is committed in their presence.

11.8 Inspection and Investigation.

The Tribal police may inspect any vehicle in a public garage or repair shop or wrecking yard in order to investigate the title and registration.

11.9 Tribal Children's Driving Permit.

(1) It is unlawful for a child under the age of thirteen (13) years to drive a motor vehicle within the exterior boundaries of the reservation, except with the authorization of the Business Committee.

(2) A child who is at least thirteen (13) years of age and less than seventeen (17) years of age may drive a motor vehicle within the exterior boundaries of the reservation only if he or she possesses a valid Tribal children's driving permit or a state of Montana driver's license.

(3) The Tribe shall maintain a place and provide the necessary staff to license children to drive within the boundaries of the reservation.

(4) Any child who is at least thirteen (13) years of age and who passes the Tribal driving test shall be issued a Tribal children's driving permit.

11.10 Failure to Possess a Valid Tribal Children's Driving Permit.

A child who violates Section 11.9 commits a delinquent act within the meaning of Chapter 2, Section 2.6 of the Tribal Juvenile Code.

11.11 Responsibility for Unlicensed Drivers.

A person who permits a child to drive a motor vehicle in violation of Section 11.9 commits an offense.

11.12 Driving When Driving Privileges Have Been Suspended.

A person who operates a motor vehicle upon the public roadways when his driving privileges have been suspended by the Court's order commits a Class B offense. In addition to the other penalties imposed for the Class B offense, the Court may suspend the person's driving privileges for a period not to exceed one (1) year in addition to the previous suspension from which this offense arose.

11.13 Failure to Operate a Vehicle in a Safe Condition.

A person who operates a motor vehicle which is in unsafe mechanical or electrical condition commits an offense.

11.14 Driving at Night With Substandard Lights.

(1) A person who operates a motor vehicle on the roadways at night without standard lights commits an offense.

(2) Standard lights must be clearly visible for a distance of five hundred (500) feet and are, on a vehicle with four (4) or more wheels, two (2) regular white light head lamps and two (2) red tail lights, or on a motorcycle, one (1) white head lamp and one (1) red tail light.

11.15 Failure to Drive Upon the Right Side of the Roadway.

A person who drives a motor vehicle on the left side of the roadway unless posted as a one (1) way roadway or when safely overtaking another vehicle commits an offense.

11.16 Failure to Drive in a Careful and Prudent Manner.

A person who fails to operate a motor vehicle in a careful and prudent manner and thereby endangers the life, health, safety, property, or rights of a person entitled to the use of a roadway commits an offense.

11.17 Failure to Obey Traffic Signs.

A person who while operating a motor vehicle fails to conform to any highway sign, any road marking, or any traffic signal put into use by any traffic official for the purpose of traffic safety and movement commits an offense.

11.18 Maneuvering Without Regard to Safety.

A driver of a motor vehicle who starts, stops, or turns a vehicle when it is not reasonably safe to do so commits an offense.

11.19 Tailgating.

A driver of a motor vehicle who follows another vehicle more closely than is reasonable and prudent commits an offense.

11.20 Improper Passing.

(1) A driver of a motor vehicle overtaking another vehicle proceeding in the same direction (a) who drives to the left side of the center line of the roadway when it is not clearly visible and free from oncoming traffic for a sufficient distance to permit overtaking safely; or (b) who, when passing on the left, returns to the right side of the roadway before he is safely clear of the overtaken vehicle; or (c) who, when passing on the left, fails to pass at a safe distance to the left commits an offense.

(2) The driver of an overtaken vehicle who increases the speed of his vehicle before the overtaking is completed commits an offense.

11.21 Exceeding the Maximum Speed Limit.

(1) A person who exceeds the speed limit while driving on the roadways commits an offense.

(2) The speed limit on roadways shall be fifty-five (55) miles per hour unless otherwise posted or unless driving conditions require a lesser speed. The maximum speed limit in residential areas and in the Tribal offices zones shall be twenty-five (25) miles per hour. The maximum speed limit in a posted school zone is twenty (20) miles per hour.

11.22 Failure to Stop for a School Bus.

A driver of a motor vehicle who approaches from either direction and (1) fails to stop for a school bus with flashing lights in operation which is receiving or discharging children; or (2) having stopped for a school bus, proceeds before the bus resumes motion or before the bus driver signals him to proceed commits an offense.

11.23 Failure to Yield Right of Way.

(1) A person driving a vehicle:

(a) Who approaches an intersection posted with a "YIELD" sign must slow to fifteen (15) miles per hour or less and yield right of way to all vehicles on the intersecting roadway which are close enough to present a hazard;

(b) Who approaches a roadway, whether or not posted, has a duty to stop and yield right of way to all approaching vehicles which are close enough to present a hazard; or

(c) Who will reach an intersection at the same time as another vehicle must yield the right of way if the other vehicle is on his right.

(2) A person who fails to yield right of way as required commits an offense.

11.24 Failure to Stop Before Driving Onto a Roadway.

A person driving a motor vehicle who enters a roadway without stopping commits an offense.

11.25 Parking on Roadway.

A person who parks a vehicle in a manner which interferes with the safety and movement of other vehicles upon a roadway commits an offense.

11.26 Obstructing or Interfering with a Driver.

(1) A person who drives a motor vehicle which carries passengers or cargo in a manner which unreasonably (a) obstructs the view of the driver; or (b) interferes with the driver's control over the vehicle commits an offense.

(2) A passenger in a motor vehicle who unreasonably (a) obstructs the view of the driver; or (b) interferes with the driver's control over the vehicle commits an offense.

11.27 Responsibility for and of Passengers.

(1) A person who (a) drives a motor vehicle and permits another to ride on the fender, bumper, hood, or any other exterior part of a motor vehicle or attach himself so as to be propelled or pulled by the motor vehicle; or (b) rides on the fender, bumper, hood, or any other exterior part of a motor vehicle or attaches himself so as to be propelled or pulled by the motor vehicle commits an offense.

(2) Riding in the back of a truck is not prohibited and reasonable exceptions shall be made for activities such as parades.

11.28 Failure to Use Protective Headgear.

A person who operates or rides a motorcycle or moped without protective headgear commits an offense. Protective headgear must be designed to lessen the chance of injury upon impact.

11.29 Pedestrians on Roadways Without Regard for Safety.

A pedestrian who (1) fails to yield the right of way to all vehicles upon the roadway when crossing a roadway at any point other than a marked crosswalk or an unmarked crosswalk at an intersection; or (2) walks along or upon a roadway while intoxicated; or (3) walks along or upon a roadway when a sidewalk is provided commits an offense.

11.30 Implied Consent to Chemical Breath Test.

(1) Any person who operates a motor vehicle upon roads or highways within the exterior boundaries of the Rocky Boy's Reservation and is arrested under Section ~~9~~² of this Title, Driving While Under the Influence of Alcohol or Drugs, shall be considered to have consented to a chemical breath test for the purpose of determining the alcohol content of his blood. Such a test may be given by or at the direction of a Tribal police officer who has reasonable cause to believe that the person has been driving while under the influence of alcohol or drugs.

(2) Unconsciousness or any other condition which makes a person incapable of refusal shall not be considered as withdrawal of consent to a chemical breath test.

(3) If a person refuses the request of a Tribal police officer to submit to a chemical breath test, none shall be given. However, the Tribal police officer shall prepare a sworn report that he has reasonable grounds to believe the arrested person has been driving or was in actual physical control of a motor vehicle upon the public highways of the Rocky Boy's Indian Reservation while under the influence of intoxicating liquor, and that the person had refused to submit to the test upon the request of the Tribal police officer. That report shall be submitted to the Tribal administrative body which determines who has the privilege to drive on the Reservation. The administrative body shall suspend that person's privilege or license to drive on the highways of the Rocky Boy's Indian Reservation for a period of sixty (60) days.

11.31 Right of Appeal to Court.

(1) The Tribal administrative body which determines who has the privilege to drive on the Reservation shall immediately, in writing, notify any person whose license or privilege to drive has been suspended under Section ~~11~~¹².30 (3) of this Title. Such person shall have the right to file a petition within thirty (30) days for a hearing in the matter in Tribal Court. The Court shall set the matter for hearing, and the prosecuting attorney for the Chippewa-Cree Tribe shall represent the Tribe.

(2) The hearing shall be limited to the following issues: whether the officer had reasonable grounds to believe that the person had been driving or was in actual physical control of a vehicle while under the influence of alcohol or drugs, whether the person was placed under arrest, and whether the person refused to submit to the test. The Court shall then determine whether the person is subject to suspension of driving privileges.

TITLE V.

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TITLE V.

DOMESTIC RELATIONS

Chapter 1. MARRIAGES

1.1 Jurisdiction.

The Tribal Court shall have jurisdiction over marriages of members of the Chippewa-Cree Tribe, and of other persons, including non-Indians, who consent to the Court's jurisdiction. Judges of the Tribal Court are authorized to perform marriage ceremonies.

1.2 Valid Marriage.

The following are valid marriages under this Code:

(1) A marriage for which a license has been issued by the Tribal Court and which has been solemnized by a Tribal Judge, or by a recognized clergyman, or by a Tribal Elder; and

(2) A common law marriage. A common law marriage exists when two persons who are capable of forming a marriage have agreed to be married, have openly cohabited, have held themselves out as married to the community, and are considered to be married by the community.

1.3 License.

The Clerk of Court, if there is no showing that the proposed marriage is prohibited, shall issue a marriage license upon payment of the license fee and upon the filing of:

(1) The written application of the parties if they are over eighteen (18) years of age, or of the parties and the parent(s) or legal guardian of any party under eighteen (18) years of age; and

(2) A certificate of a physician that the medical examination required by Section 1.5 of this Title has been performed.

1.4 Application for License.

The Business Committee of the Chippewa-Cree Tribe shall prescribe the form for an application for a marriage license, which shall include the following information:

(1) Name, sex, address, date and place of birth of each party to the proposed marriage;

(2) If either party was previously married, his name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(3) Name and address of the parents or guardian of each party;

(4) Whether the parties are related to each other and, if so, their relationship;

2.3 Procedure.

Procedures for annulment must be instituted by the party under the disability or upon whom the force, fraud, or duress was imposed.

Chapter 3.

DIVORCE OR SEPARATION

3.1 Grounds for Divorce.

A marriage shall be dissolved by divorce or legal separation in the Tribal Court, upon petition by one or both of the parties to the marriage, if:

(1) At the time the action is filed, at least one (1) of the parties has lived within or has been domiciled within the Court's jurisdiction for the preceding ninety (90) days, or has significant connections with the Chippewa-Cree Tribe;

(2) The Court finds that the marriage is irretrievably broken;

(3) To the extent that it has jurisdiction to do so, the Court has provided for child custody, child support, support of either spouse, and a disposition of property. The Court may provide for a separate, later hearing to complete these matters.

3.2 Complaint.

The complaint shall state that the marriage is irretrievably broken, and shall set forth:

(1) The age, occupation and residence of each party and the length of his residence there;

(2) The date of the marriage and the place at which it was registered;

(3) That the jurisdictional requirements are met;

(4) The names, ages and addresses of all living children of the marriage and whether the wife is pregnant;

(5) Any proposed arrangements as to support, custody and visitation of the children and maintenance of either spouse;

(6) Whether divorce or legal separation is sought.

3.3 Service and Response.

If one party files the petition, the other party must be served in the manner prescribed in the Civil Procedure Title of this Code, and may, within fourteen (14) days after the date of service, file a verified response. No decree may be entered until twenty (20) days after the date of service.

3.4 Irretrievable Breakdown.

(1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken or one of the parties has so stated and the other has not denied it, the Court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the Court shall consider all relevant factors, including the circumstances

(5) Whether or not either party is an enrolled member of the Chippewa-Cree Tribe; and

(6) The name and date of birth of any child of whom both parties are parents born prior to the making of the application unless their parental rights have been terminated.

1.5 Medical Examination.

No marriage license may be issued unless the parties submit a certificate of a physician stating that within two months of the application for marriage license:

(1) Each party has been examined by the physician; and

(2) The physician has explained to the parties in the presence of both so much of the results of the examinations as is likely to affect their marital life or their children.

1.6 Prohibited Marriages.

(1) The following marriages are prohibited:

(a) A marriage entered into while one of the parties is married to another person;

(b) A marriage between an ancestor and a descendant or between a brother and a sister or between first cousins;

(c) A marriage between an uncle and a niece or between an aunt and a nephew;

(d) Any other other marriage prohibited by Tribal custom and tradition.

(2) Children born of a prohibited marriage are:

(a) Legitimate; and

(b) Tribal members if otherwise qualified.

Chapter 2. ANNULMENT

2.1 Grounds for Annulment.

The Tribal Court shall have jurisdiction to hear and determine matters of annulment upon the application of one of the parties:

(1) When either party to the marriage was incapable of consenting to the marriage, because of age;

(2) When consent was obtained by force, fraud, or duress;

(3) When the party making application was of unsound mind at the time of the marriage;

(4) When either party was at the time of the marriage incapable of consummating the marriage and the incapacity is continuing;

(5) When the marriage is prohibited.

2.2 Waiver of Grounds for Annulment.

Except for a prohibited marriage, if, after disclosure or termination of any of the above defects, the parties continue to live together as husband and wife for a period of six (6) months, the marriage shall not later be subject to annulment because of that defect.

that gave rise to filing the petition and the prospect of reconciliation, and shall:

(a) Make a finding whether the marriage is irretrievably broken; or

(b) Continue the matter for further hearing not more than sixty (60) days later and may suggest to the parties that they seek counseling.

(3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

3.5 Temporary Orders.

During the proceedings for divorce or legal separation, the Tribal Court may make temporary orders:

(1) Requiring the husband or wife to provide for the separate maintenance of his or her spouse and children as the Court may deem just;

(2) Providing for the care, custody and maintenance of the minor children of the marriage;

(3) Ordering the restraint of either spouse from in any manner threatening or interfering with the other spouse or with the minor children.

3.6 Judgments.

In addition to the dissolution of marriage by decree, the Tribal Court shall have the power to impose judgment as follows:

(1) For future custody and care of the minor children of the marriage as may be in the best interest of the children;

(2) For payment of an amount of money for either party to contribute toward the education and support of the children;

(3) For payment of an amount of money or personal property for either party to contribute to the maintenance of the other;

(4) For the recovery of and delivery to each of the parties any of their personal property in the possession or control of the other;

(5) For whatever equitable distribution of marital property the Court deems just and proper based on considerations of age of the parties, health, education and skills, financial circumstances of each, and the duration of the marriage;

(6) For the restoration of the maiden name of the wife.

3.7 Separation Agreement.

The parties in an action for legal separation or divorce may enter into a separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody and visitation of their children. The terms of the separation agreement, except those providing for support, custody and visitation of the children, are binding on the Court, unless the Court finds the agreement to be unconscionable.

3.8 Best Interest of the Child.

The Court shall have jurisdiction to determine child custody if the child is domiciled or resides within the Court's jurisdiction or if it is in the best interest of the child that the

Tribal Court assume jurisdiction. The Court shall determine child custody in accordance with the best interest of the child.

3.9 Decree.

A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. The Clerk of Court shall give notice of the entry of a decree of dissolution or legal separation, to the Clerk of Court in the place where the marriage was registered and to a party to the marriage who did not appear in the proceedings.

3.10 Modification and Termination of Provisions for Maintenance, Support, and Property Disposition.

(1) A decree may be modified by a Court as to maintenance or support only as to installments accruing subsequent to the motion for modification.

(2) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under Subsection (1) may only be made:

(a) Upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or

(b) Upon written consent of the parties.

(3) The provision as to property disposition may not be revoked or modified by a Court, except:

(a) Upon written consent of the parties; or

(b) If the Court finds the existence of conditions that justify the reopening of a judgment under the laws of the Tribe.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or committed to a lump-sum payment, to the extent just and appropriate in the circumstances.

3.11 Payment of Maintenance or Support to Court.

(1) Upon its own motion or upon motion of either party, the Court may order at any time that maintenance or support payments be made to the Clerk of the Tribal Court as trustee for remittance to the person entitled to receive the payments.

(2) The Clerk of the Tribal Court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.

Chapter 4. ADOPTION

4.1 Who May Be Adopted.

Any minor, a person under eighteen (18) years of age, may be adopted if:

- (1) The minor has no living parent, or;
 - (2) The parental rights of the living parents of the minor have been terminated, or;
 - (3) The living parents consent to the adoption.
- An adult may be adopted, with his or her written consent.

4.2 Consent to Adoption.

Written consent to an adoption is required of:

- (1) Any living parent of the child, except for those parents whose parental rights have been terminated, and;
- (2) The legal guardian or custodian of the child, if there is any, and;
- (3) The Court, if neither the parents, guardians or custodians are empowered to consent, and;
- (4) The child, if he or she is over twelve (12) years of age.

4.3 Petition for Adoption.

A petition for adoption shall be filed by the prospective adoptive parent and shall state:

- (1) The full name, age and place of residence of the petitioner, and if a married couple, the place and date of the marriage;
- (2) The date and place of birth of the child, if known;
- (3) The name now used for the child and, if a change in name is desired, the new name;
- (4) That it is the desire of petitioner that the relationship of parent and child be established between petitioner and child;
- (5) Facts, if any, which excuse consent on the part of a parent to the adoption.

The written consent required may be filed with the petition or, with the Court's consent, after the filing of the petition.

4.4 Investigation.

After the filing of a petition for adoption, the Court shall order an investigation to be conducted by the Department of Social Services. The report of the investigation shall be filed with the Court within thirty (30) days of the order for investigation, and shall state:

- (1) Whether the child is legally free for adoption;
- (2) Whether the proposed name is a suitable one for the child;
- (3) That medical and social histories have been provided to the adoptive parents;
- (4) Any other circumstances and conditions of which the Court should have knowledge;
- (5) A recommendation for or against the proposed adoption.

4.5 Hearing.

All parties who must give consent to the adoption must be given notice of the adoption hearing, according to the Rules of Civil Procedure in this Code. All adoption hearings shall be private and closed to the public. The Court shall conduct the hearing to determine if the adoption is in the best interest of the person to be adopted.

4.6 Decree.

If the person to be adopted is a member of the extended family of the petitioner, or if the Court finds that the best interest of the person to be adopted will be served, the Court may grant a final decree of adoption.

In all other cases, the Court, if it finds that the adoption is in the best interest of the person to be adopted, may issue a temporary decree of adoption. After a temporary decree has been granted, the Department of Social Services shall observe the adoptive home and report in writing to the Court within six (6) months on any circumstances or conditions which may have a bearing on the adoption. After six (6) months from the date of the temporary decree, the petitioner may apply to the Court for a final decree of adoption. After a hearing on the application, the Court may enter a final decree of adoption if it is satisfied that the adoption is in the best interest of the child. If the adoption is denied, the Court shall issue an order as to the future custody of the child.

4.7 Withdrawal of Consent.

Consent to an adoption may be withdrawn at any time before the entry of the final decree.

Chapter 5.

GUARDIANSHIP

5.1 Persons for Whom Guardian May be Appointed.

The Court may appoint, upon motion or on its own, a guardian for the care of the person or property of a minor or incapacitated person who shall be known as the ward.

5.2 Investigation.

The Court shall require a report from the Social Services Department on the suitability of the parties involved to be guardian and ward.

5.3 Notice.

Notice of the time and place of hearing of a petition for the appointment of a guardian is to be given to: the minor or incapacitated person, if he is fourteen (14) or more years of age, and to the minor's parents or custodian or to the incapacitated person's nearest living relative or caretaker.

5.4 Hearing.

At the hearing, if the Court finds that a qualified person seeks appointment, notice has been given, and the welfare and

best interest of the minor or incapacitated person will be served by the requested appointment, it shall make the appointment. In other cases, the Court may dismiss the proceedings or make any other order that will serve the best interest of the minor or incapacitated person.

5.5 Powers and Duties of Guardians.

The powers and duties of the guardian shall be those stated in the order of appointment. The Court may grant the guardian the powers and responsibilities of the parent of a minor child; the custody of the ward; the power to oversee the minor or incapacitated person's property, except that no property may be disposed of without the Court's approval; or any limited powers that the Court feels are in the ward's best interest (such as power to consent to marriage or power to approve expenditures).

5.6 Reporting to the Court.

Any guardian appointed under this Section shall advise the Court at least once per year, or more often at the Court's request, of the actions of the guardian on behalf of the ward or his property. The guardian shall also advise the Court of his actions on behalf of the ward at the time the guardianship is terminated.

5.7 Termination of Guardianship.

Termination of the guardianship shall occur:

- (1) When the minor ward becomes eighteen (18), or;
- (2) Upon application by the guardian, if granted by the Court, or;
- (3) Upon the death of the guardian or ward, or;
- (4) Upon a determination by the Court that the ward is no longer incapacitated.

TITLE VI.

JUVENILE PROTECTION

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TITLE VI.
JUVENILE PROTECTION

Chapter 1. PREAMBLE

1.1 The Purpose of the Code.

The young people of the Chippewa-Cree Tribe of the Rocky Boy's Reservation are the Tribe's most important resource and their welfare is of paramount importance to the Chippewa-Cree Tribe.

It is important that the young people of the Chippewa-Cree Tribe receive, preferably in their own homes, the care and guidance needed to prepare them to take their places as adult members of the Chippewa-Cree Tribe.

This court shall protect the child's interest by choosing a course of action which least restricts the child's freedom and is consistent with the safety and interests of the Chippewa-Cree Tribe.

The Chippewa-Cree Tribe needs a recognized Children's Court System to insure that off-reservation courts will be willing to return young people of the Tribe to the reservation for care and guidance.

Chapter 2. DEFINITIONS

For the purpose of this Code, the words and phrases shall have the meanings respectively ascribed to them.

2.1 Abandon.

When a parent leaves a child without communication or fails to support a child and there is no indication of the parent's willingness to assume his parental role(s) for a period exceeding two (2) years.

2.2 Adult.

A person eighteen (18) years of age or older.

2.3 Children's Court.

The Rocky Boy's Tribal Court when exercising jurisdiction under this Code.

2.4 Children's Court Judge.

Any duly appointed, elected judge of the Rocky Boy's Tribal Court when exercising jurisdiction under this Code.

2.5 Custodian.

One who has physical custody of a minor and who is providing food, shelter, and supervision to him.

2.6 Delinquent Act.

An act, which, if committed by an adult, is designated a crime under the Rocky Boy's Tribal Criminal Code.

2.7 Detention.

The placement of a child in a physically restrictive facility.

2.8 Guardian.

A person other than the child's parent who is by law responsible for the child.

2.9 Juvenile Offender.

A person who commits a delinquent act prior to his eighteenth (18th) birthday.

2.10 Least Restrictive Alternative.

This item in the Code directs the court to select the least drastic method of achieving its goal. The restrictions placed on the child must be reasonably related to the Court's objectives and must be the least restrictive way of achieving that objective. For example, the reason any person is held in detention before trial is to insure that the person will not leave the area. Therefore, the only restraint on that person's freedom is the restriction on his freedom of movement. No other restriction, such as mail censorship or being placed in solitary confinement, is related to the stated purpose of pre-trial detention.

2.11 Child.

- (1) Person under eighteen (18) years of age.
- (2) A person eighteen (18) years of age or older concerning whom proceedings are commenced in Children's Court prior to his eighteenth (18th) birthday.
- (3) A person eighteen (18) years of age or older who is under the continuing jurisdiction of the Children's Court.

2.12 Child in Need of Care.

- (1) A child who has no parent, guardian or custodian available and willing to care for him; or
- (2) A child who has suffered or is likely to certainly suffer a physical injury inflicted upon him by other than accidental means, which causes or creates a substantial risk or death, disfigurement, or impairment of bodily functions; or
- (3) A child who has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his parent, guardian or custodian necessary for his health and well-being; or
- (4) A child who has been committing delinquent acts as a result of parental pressure, guidance, or approval.

Chapter 3. THE COURT SYSTEM

3.1 Establishment.

There is hereby established for the Chippewa-Cree Tribe of the Rocky Boy's Reservation a court to be known as the Rocky Boy's Children's Court. The Rocky Boy's Children's Court shall consist of one (1) judge, elected by the members of the Tribe.

3.2 Powers and Duties.

No adjudication upon the status of any child in the jurisdiction of the Children's Court shall be deemed criminal or be deemed of a conviction of a crime, unless the Children's Court refers the matter to the Adult Court. Therefore, the disposition of a child, or evidence given shall not be admissible as evidence against the child in any proceedings in another court.

3.3 Authority of Court.

The Children's Court is authorized to cooperate fully with any Federal, State, Tribal, Public or Private Agency to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purposes of this Code. The Children's Court shall utilize such social services as may be furnished by any Tribal, Federal or State Agency.

3.4 Children's Court Counselor.

(1) The Children's Court shall appoint a Children's Court Counselor to carry out the duties and responsibilities set forth in this Code. The Chief Judge of the Adult Court shall annually certify to the (Business Committee, Law and Order Commission) the number of qualified Children's Court Counselors needed to carry out the purpose of this Code.

(2) The Children's Court Counselor must have an educational background and/or prior experience in the field of delivering social services to youth.

(3) The Children's Court Counselor shall identify and develop resources on the reservation designed to enhance each Tribal child's potential as a valuable member of the Tribal community.

(4) The Children's Court Counselor shall not testify against any child in any proceeding under this Code or any adjudicatory proceeding.

3.5 Presenting Officer.

(1) The Children's Court shall appoint a presenting officer to carry out duties and responsibilities set forth in this Code. The Chief Judge of the Adult Court shall annually certify to the (Business Committee, Law and Order Commission) the number of qualified presenting officers needed to carry out the purposes of this Code.

(2) The Presenting Officer's qualifications shall be the same as the qualifications for the Official who acts as prosecutor for the Adult Tribal Court.

(3) The presenting officer shall represent the people of the Chippewa-Cree Tribe in all proceedings under this Code.

3.6 Guardian Ad Litem.

The Children's Court, under any proceeding authorized by this Code, shall appoint, for the purpose of that proceeding, a guardian ad litem for a child where the court finds that the child does not have a natural or adoptive parent, guardian or custodian willing and able to exercise effective guardianship.

3.7 Referee.

(1) The Children's Court shall appoint a referee to carry out the following duties:

(a) Order that a minor be taken into custody under Section 5.2 and 6.2 of this Code; and

(b) Conduct a preliminary inquiry under Sections 5.7 and 6.7 of this Code; and

(c) Authorize a line-up under Section 5.24 under this Code.

(2) The Children's Court may direct the referee to conduct hearings in any case, except where:

(a) The allegations set forth in the juvenile offender or minor-in-need-of-care petitions are denied; or

(b) The hearing is one to determine whether a case shall be transferred to adult court under Section 4.2 of this Code; or

(c) Any party objects to a hearing by a referee.

(3) Upon the conclusion of a hearing before a referee, the referee shall transmit his findings and recommendations for a disposition in writing to the Children's Court Judge. Prompt written notice of the findings and recommendations shall be given to the parties to the proceeding. The written notice shall also inform the parties of their right to a rehearing before the Children's Court Judge.

(4) A rehearing may be ordered by the Children's Court Judge at any time and shall be ordered if any party files a written request for a rehearing within three (3) days after receiving the referee's report.

(5) If a party does not request a rehearing by the Children's Court Judge, the referee's findings and recommendation become the order of the Children's Court after the Children's Court Judge adopts and approves the findings and recommendations.

3.8 Standards for Shelter Care and Detention Facilities.

(1) The Tribal Indian Child Welfare Program in consultation with the Children's Court Judge shall prescribe rules and regulations governing the operation of detention and shelter care facilities.

(2) The rules and regulations shall include, but are not limited to the following:

(a) Cleanliness;

(b) Heat, water, and light standards;

(c) Personnel standards;

(d) Visitation privileges;

(e) Occupancy standards;

(f) Provisions for medical and dental care; and

(g) Provisions for food, furnishing, clothing and toilet articles.

(3) The rules and regulations shall be enforced by the Children's Court Judge.

3.9 Care and Treatment in Shelter Care and Detention Facilities.

(1) The Tribal Indian Child Welfare Program, in

consultation with the Children's Court Judge shall prescribe policies and procedures governing the administration of detention and shelter care facilities.

(2) Such policies and procedures shall include, but are not limited to the following:

(a) A minor shall not be punished, ridiculed or criticized for expressing through speech, custom, or dress, the minor's Indian or Tribal heritage.

(b) A minor shall be allowed to wear his hair according to his personal taste. The minor shall not be punished, ridiculed or criticized for the hair style he selects;

(c) A minor may wear his own clothes rather than clothes supplied by the detention facility, so long as they comply with minimum standards of cleanliness;

(d) Incoming and outgoing mail may be inspected for contraband, but shall not be read;

(e) Whenever possible, the minor shall be allowed to attend the school in which he is enrolled. School work and educational assistance, at the minor's level of development, shall be provided for the minor in detention facilities;

(f) A minor shall be allowed to attend traditional religious ceremonials provided that he is accompanied by a parent, guardian or custodian; has received consent to do so by the Children's Court Judge; and returns immediately to the detention or shelter care facility.

(g) A minor shall be allowed to attend the funeral and any related activities of his brother, sister, mother, father, aunt, uncle, grandmother, grandfather or cousin, whether they be natural or adopted provided that:

(i) His parent, guardian or custodian request and receive permission from the Children's Court Judge; and

(ii) He is accompanied by a parent, guardian or custodian; and

(iii) He return immediately to the shelter care or detention facility;

(h) A minor shall be given the opportunity to engage in physical exercise every day;

(i) A minor shall not be locked alone in a room unless there exists a reasonable belief that he may cause physical injury to himself or others if not locked alone. While the minor is locked alone in a room, he must be visited at least once an hour. The confinement shall not continue unnecessarily;

(j) A minor shall not be punished by physical force, solitary confinement or deprivation of meals or family visits;

(k) A minor in a detention facility shall not be required to perform work duties, rather his education shall be encouraged.

(3) The policies and procedures shall be enforced by the Children's Court Judge.

Chapter 4. JURISDICTION

4.1 Original Jurisdiction.

The Children's Court has exclusive, original jurisdiction of the following proceedings:

(1) Proceedings in which the minor is alleged to be a juvenile offender, unless the Children's Court transfers jurisdiction to Adult Tribal Court pursuant to Section 4.2 of this Code.

(2) Proceedings in which a minor is alleged to be a minor-in-need-of-care.

4.2 Transfer to Adult Tribal Court.

(1) The presenting officer of the minor may file a petition requesting the Children's Court to transfer the minor to Adult Tribal Court if the minor is fourteen (14) years of age or older and is alleged to have committed an act that would have been considered a crime if committed by an adult.

(2) The Children's Court shall conduct a hearing to determine whether jurisdiction of the minor should be transferred to Adult Tribal Court.

(a) The transfer hearing shall be held not more than ten (10) days after the transfer is filed.

(b) Written notice of the transfer hearing shall be given to the minor's parents, guardian or custodian at least seventy-two (72) hours prior to the hearing.

(c) Right to Counsel.

(i) The Children's Court shall inform the minor and his parents, guardian or custodian of their rights to retain counsel by telling them, "According to the Indian Civil Rights Act, you have a right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees for such representation."

(ii) If the parties appear at the hearing without counsel, the Children's Court Judge shall continue the proceedings if they need additional time to seek counsel.

(iii) If the parties are unable to pay for counsel, the Children's Court Judge shall inform them of any available services that provide representation.

(d) The minor need not be a witness against, nor otherwise incriminate, himself.

(e) The minor and the minor's parent, guardian or custodian shall be entitled to introduce evidence, to be heard on their own behalf, and to examine witnesses.

(3) Prior to the hearing, a study and a report in writing shall be submitted to the Children's Court by the Children's Court Counselor. Such study shall be relevant to Section 4.4.

(4) The following factors shall be considered when determining whether to transfer jurisdiction of the minor to Adult Tribal Court:

(a) The nature and seriousness of the offense with which the minor is charged.

(b) The nature and condition of the minor, as evidenced by his age, mental and physical condition; past record of offenses; and responses to past Children's Court efforts at rehabilitation.

(5) The Children's Court may transfer jurisdiction of the minor to Adult Court if the Children's Court finds clear and convincing evidence that both of the following circumstances exist.

(a) There are no reasonable prospects for rehabilitating the minor through resources available to the Children's Court; and

(b) The offense allegedly committed by the minor evidences a pattern of conduct which constitutes a substantial danger to the public.

(6) When a minor is transferred to Adult Tribal Court, the Children's Court shall issue a written transfer order containing reasons for its order. The transfer order constitutes a final order for purposes of appeal.

Chapter 5. JUVENILE OFFENDER PROCEDURE

5.1 Complaint.

A complaint may be filed by a person who has knowledge of the facts alleged. The complaint shall be signed by the complainant. The complaint shall contain:

(1) A citation to the specific statutory provisions of this Code which gives the Children's Court jurisdiction of the proceedings; and

(2) A citation to the Tribal Code Provision which the minor is alleged to have violated; and

(3) Name, age and address of the minor who is the subject of the complaint, if known; and

(4) A plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred.

5.2 Warrant.

The Children's Court may enter an order called a warrant directing that a minor be taken into custody if the Children's Court finds there is probable cause to believe the minor committed the delinquent act alleged in the complaint.

5.3 Custody.

A minor may be taken into custody by a law enforcement officer if:

(1) The officer has reasonable grounds to believe a delinquent act has been committed and that the minor has committed the delinquent act; or

(2) A warrant pursuant to Section 5.2 of this Code has been issued for the minor.

5.4 Law Enforcement Officer's Duties.

A law enforcement officer who takes a minor into custody pursuant to Section 5.3 of this Code shall proceed as follows:

(1) An arresting officer shall give the following warnings to any child he takes into custody prior to any questioning:

- (a) The child has the right to remain silent; and
- (b) Anything the child says can be used against the child in court; and
- (c) The child has the right to the presence of an attorney during questioning; and
- (d) If he cannot afford an attorney, the court will help him obtain the services of one through available reservation services.

(2) An arresting officer shall release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate, unless shelter care or detention is necessary.

(3) If the child is not released, an arresting officer shall make immediate and recurring efforts to notify the child's parent, guardian or custodian to inform them that the child has been taken into custody and inform them of their right to be present with the child until an investigation to determine the need for shelter care or detention is made by the Children's Court Counselor pursuant to Section 5.5 of this Code.

(4) If the child is not released, the child shall be taken immediately to the Children's Court counselor by the arresting officer.

5.5 Children's Court Counselor's Duties.

(1) The Children's Court Counselor shall not place a child in detention unless a complaint is filed in accordance with Section 5.1 of this Code or the Children's Court orders that a child be taken into custody pursuant to Section 5.2 of this Code.

(2) If the child's parent, guardian or custodian has not been contacted, the Children's Court Counselor shall make immediate and recurring efforts to inform them that the child has been taken into custody and release the child to the parent, guardian or custodian unless detention or shelter care is immediately necessary.

(3) If a child is not released to his parent, guardian or custodian the Children's Court Counselor shall place the child in detention or shelter care pending the preliminary inquiry.

(4) If a child is not released to his parent, guardian or custodian the Children's Court Counselor shall immediately explore alternative preadjudication custody arrangements and prepare recommendations for temporary care and custody for presentation at the preliminary inquiry.

5.6 Detention and Shelter Care.

(1) A child alleged to be a juvenile offender may be detained, pending a court hearing, in the following places:

- (a) A foster care facility on the reservation approved by the Tribe; or
- (b) A detention home on the reservation approved by the Tribe; or
- (c) A private family home on the reservation approved by the Tribe.

(2) A child who is sixteen (16) years of age or older may be detained in a jail or facility used for the detention of adults only if:

(a) A facility in Section 5.6 (1) is not available or would not assure adequate supervision of the child; and

(b) Detention is in a cell separate but not removed from sight and sound of adults whenever possible; and

(c) Adequate supervision is provided twenty-four (24) hours a day.

5.7 Preliminary Inquiry.

(1) If a child is placed in detention or shelter care by the Children's Court Counselor pursuant to Section 5.5 (3) of this Code, the Children's Court shall conduct a preliminary inquiry within twenty-four (24) hours for the purpose of determining:

(a) Whether probable cause exists to believe the child committed the alleged delinquent act; and

(b) Whether continued detention or shelter care is necessary pending further proceedings.

(2) If a child has been released to his parent, guardian or custodian, the Children's Court shall conduct a preliminary inquiry within three (3) days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the child committed the alleged act.

(3) If the child's parent, guardian or custodian is not present at the preliminary inquiry, the Children's Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the Children's Court shall recess for not more than twenty-four (24) hours and direct the Children's Court Counselor to make continued efforts to obtain the presence of a parent, guardian or custodian.

(4) Notice.

(a) Notice of the preliminary inquiry shall be given to the child and his parent, guardian or custodian and their counsel as soon as the time for the inquiry has been established.

(b) The notice shall contain:

(i) The name of the Court; and

(ii) The title of the proceedings; and

(iii) A brief statement of the substance of the allegations against the child; and

(iv) The date, time and place of the preliminary inquiry.

(c) The notice shall be delivered by a Tribal Law Enforcement officer, or an appointee of the Children's Court.

(5) Rights of Parties.

(a) Right to Counsel.

(i) The Children's Court Judge shall inform the child and his parent, guardian or custodian of their right to retain counsel by telling them "According to the Indian Civil Rights Act, you have a

right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees for such representation."

(ii) If the parties appear at the hearing without counsel, the Children's Court Judge shall continue the proceedings if they need additional time to seek counsel.

(iii) If the parties are unable to pay for counsel the Children's Court Judge shall inform them of any available services that provide representation.

(b) The child need not be a witness against, nor otherwise incriminate, himself.

(c) The Children's Court shall give the child, his counsel or person he has selected to represent him, and the child's parent, guardian or custodian and his counsel or person he has selected to represent him, the opportunity to introduce evidence, to be heard on their own behalf and to examine witnesses.

(6) The Children's Court shall hear testimony concerning:

(a) The circumstances that gave rise to the complaint or the taking of the child into custody; and

(b) The need for detention or shelter care.

(7) If the Children's Court finds that probable cause exists to believe the child performed the delinquent act, the child shall be released to his parents and ordered to appear at the adjudicatory hearing, unless:

(a) The act is serious enough to warrant continued detention or shelter care; and

(b) There is reasonable cause to believe that the child will run away so that he will be unavailable for further proceedings; and

(c) There is reasonable cause to believe that the child will commit a serious act causing damage to person or property.

(8) The Children's Court may release a child pursuant to Section 5.7 (7) of this Code to a relative or other responsible adult Tribal member if the parent, guardian or custodian of a child consents to the release. If the child is ten (10) years of age or older, the child and his parent, guardian or custodian must both consent to the release.

(9) Upon finding that probable cause exists to believe that the child committed the alleged delinquent act and that there is a need for detention or shelter care, the child's detention or shelter care shall be continued. The Court shall consider the Children's Court Counselor's recommendation prepared pursuant to Section 5.5 (4).

(10) If probable cause to believe the child committed the alleged delinquent act and the need for detention or shelter care is not found, the complaint shall be dismissed and the child released.

5.8 Investigation by the Children's Court Counselor.

The Children's Court Counselor shall make an investigation within twenty-four (24) hours of the preliminary inquiry or the

release of the child to his parent, guardian or custodian, to determine whether the interests of the child and the public require that further action be taken. Upon the basis of his investigation, the Children's Court Counselor may:

- (1) Recommend that no further action be taken; or
- (2) Suggest to the child, his parent, guardian or custodian that they appear for an informal hearing pursuant to Section 5.9 of this Code; or
- (3) Request the presenting officer to begin transfer to Adult Tribal Court proceedings pursuant to Section 4.2 of this Code; or
- (4) Recommend that the presenting officer file a petition pursuant to Section 5.10 of this Code in the Children's Court to initiate further proceedings. The petition shall be filed within forty-eight (48) hours if the child is in detention or shelter care. If the child has been previously released to his parent, guardian, custodian, relative or responsible adult, the petition shall be filed within ten (10) days.

5.9 Informal Hearing.

(1) The Children's Court Counselor may hold an informal conference with the child and child's parent, guardian or custodian to discuss alternatives to the filing of a petition if:

- (a) The admitted facts bring the case within the jurisdiction of the Children's Court; and
- (b) An informal adjustment of the matter would be in the best interest of the child and the Tribe; and
- (c) The child and his parent, guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

(2) Notice.

(a) Notice of the informal hearing shall be given to the child and his parent, guardian or custodian and their counsel as soon as the time for the hearing has been established.

(b) The notice shall contain:

- (i) The name of the court; and
- (ii) The title of the proceeding; and
- (iii) A brief statement of the substance of the allegations against the child; and
- (iv) The date, time and place of the informal hearing.

(c) The notice shall be delivered by a Tribal Law Enforcement officer or an appointee of the Children's Court. If the notice cannot be delivered personally, the notice shall be delivered by registered mail.

(3) Rights of Parties.

(a) Rights to Counsel.

(i) The Children's Court Counselor shall inform the child and his parents, guardian or custodian of their right to retain counsel by telling, "According to the Indian Civil Rights Act, you have a right to have a lawyer or other person represent you at this hearing."

However, you must pay any fees for such representation."

(ii) If the parties appear at the hearing without counsel, the Children's Court Counselor shall continue the proceedings if they need additional time to seek counsel.

(iii) If the parties are unable to pay for counsel, the Children's Court Counselor shall inform them of any available services that provide representation.

(b) The child need not be a witness against, nor otherwise incriminate, himself.

(c) The child and the child's parent, guardian or custodian shall be entitled to introduce evidence, to be heard on their own behalf, and to examine witnesses.

(4) No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any proceedings against the child under this Code.

(5) This Section does not authorize the Children's Court Counselor to compel any person to appear at any conference, produce any papers or visit any place.

(6) At the informal hearing, the Children's Court Counselor may:

(a) Refer the child and the parent, guardian or custodian to a community agency for needed assistance; or

(b) Order terms of supervision calculated to assist and benefit the child which regulate the child's activities and which are within the ability of the child to perform; or

(c) Accept an offer of restitution if voluntarily made by the child; or

(d) Recommend that the presenting officer file a petition pursuant to Section 5.10 of this Code.

(7) Any informal adjustment period shall not exceed six (6) months.

(8) The Children's Court Counselor shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation.

(9) The Children's Court Counselor shall review the child's progress every thirty (30) days. If, at any time after the initial thirty (30) day period, the Counselor concludes that positive results are not being achieved, the counselor shall recommend that the presenting officer file a petition pursuant to Section 5.10.

5.10 Petition.

Proceedings under the Children's Code shall be instituted by a petition filed by the presenting officer on behalf of the Tribe and in the interests of the child. The petition shall state:

(1) The name, birthdate, and residence of the child;

(2) The names and residences of the child's parent, guardian or custodian;

(3) A citation to the specific statutory provision of this Code which gives the Children's Court jurisdiction of the proceedings;

(4) A citation to the Tribal Code provision which the child is alleged to have violated; and

(5) If the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody.

5.11 Setting Hearing Date.

Upon receipt of the petition, the Children's Court shall set a date for the hearing which shall not be more than ten (10) days after the Children's Court receives the petition from the presenting officer. If the adjudicatory hearing is not held within ten (10) days after the filing of the petition, the petition shall be dismissed and cannot be filed again, unless:

(1) The hearing is continued upon motion of the child; or

(2) The hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the Children's Court finds the presenting officer has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

5.12 Summons.

(1) At least five (5) days prior to the adjudicatory hearing, the Children's Court shall issue summons to:

(a) The child; and

(b) The child's parent, guardian or custodian; and

(c) Any person the Children's Court believes necessary for the proper adjudication of the hearing; and

(d) Any person the child believes necessary for the proper adjudication of the hearing.

(2) The summons shall contain the name of the court, the title of the proceedings, and the date, time and place of the hearing.

(3) A copy of the petition shall be attached to the summons.

(4) The summons shall be delivered personally by a Tribal Law enforcement officer or appointee of the Children's Court. If the summons cannot be delivered, the court may deliver the summons by registered mail. If the summons cannot be delivered personally or by registered mail, the summons may be by publication.

(5) If a person who has been issued a summons fails to appear at the hearing, the person shall be held in contempt of court.

5.13 Adjudicatory Hearing.

The Children's Court shall conduct the adjudicatory hearing for the sole purpose of determining the guilt or innocence of the child. The hearing shall be private and closed.

(1) Rights of Parties.

(a) Rights to Counsel.

(i) The Children's Court judge shall inform the child and his parents, guardian or custodian of their right to retain counsel by telling them, "According to the Indian Civil Rights Act, you have a right to have a

lawyer or other person represent you at this hearing. However, you or your family must pay any fees for such representation."

(ii) If the parties appear at the hearing without counsel, the Children's Court Judge shall continue the proceedings if they need additional time to seek counsel.

(iii) If the parties are unable to pay for counsel the Children's Court Judge shall inform them of any available services that provide representation.

(b) The child need not be a witness against, nor otherwise incriminate, himself.

(2) The child and the child's parent, guardian or custodian shall be entitled to introduce evidence, to be heard on their own behalf, and to examine witnesses.

(3) If the child admits the allegations of the petition, the Children's Court shall proceed to the dispositional stage only if the Children's Court finds:

(a) The child fully understands his rights as set forth in Section 5.13 (1) of this Code and fully understands the potential consequences of his admission; and

(b) The child voluntarily, intelligently, and knowingly admits to all facts necessary to constitute a basis for Children's Court action; and

(c) The child has not, in his purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

(4) The Children's Court shall hear testimony concerning the circumstances which give rise to the complaint.

(5) If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Children's Court shall find the child to be a juvenile offender and proceed to the dispositional hearing.

(6) A finding that a child is a juvenile offender constitutes a final order for purposes of appeal.

5.14 Predispositional Report.

(1) The Children's Court Counselor shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of and assistance to the child calculated to resolve the problems presented in the petition.

(2) The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child under the proposed plan.

(3) Preference shall be given to the dispositional alternatives which are listed in Section 5.16 and select that which is the least restrictive of the child's freedom and is consistent with the interests of the Tribe. The report shall contain specific reasons for not recommending placement of the child with his parent, guardian or custodian.

(4) The Children's Court Counselor shall present the predispositional report to the Children's Court, the person

selected by the child to represent him and the presenting officer, at least one (1) day before the dispositional hearing.

5.15 Dispositional Hearing.

(1) A dispositional hearing shall take place not more than ten (10) days after the adjudicatory hearing.

(2) At the dispositional hearing, the Children's Court shall hear evidence on the question of proper disposition.

(3) Notice.

(a) Notice of the dispositional hearing shall be given to the child and his parent, guardian or custodian and their counsel at least forty-eight (48) hours before the hearing.

(b) The notice shall contain:

(i) The name of the court; and

(ii) The title of the proceedings; and

(iii) A statement that the hearing is to determine the disposition of the case; and

(iv) The date, time and place of the dispositional hearing.

(c) The notice shall be delivered by a Tribal Law Enforcement Officer or an appointee of the Children's Court. If the notice cannot be delivered personally, the notice shall be delivered by registered mail.

(4) Rights of Parties.

(a) Right to Counsel.

(i) The Children's Court Judge shall inform the child and his parents, guardian or custodian of their right to retain counsel by telling them "According to the Indian Civil Rights you have a right to have a lawyer or other person represent you or your family at this hearing. However, you or your family must pay any fees for such representation."

(ii) If the parties appear at the hearing without counsel, the Children's Court Judge shall continue the proceedings if they need additional time to seek counsel.

(iii) If the parties are unable to pay for counsel, the Children's Court Judge shall inform them of any available services that provide representation.

(b) The child need not be a witness against, nor otherwise incriminate, himself.

(c) The child and the child's parent, guardian or custodian shall be entitled to introduce evidence, to be heard on their own behalf, and to examine witnesses.

(5) At the dispositional hearing, the Children's Court shall consider the predispositional report submitted by the Children's Court counselor and afford the parents an opportunity to controvert the factual contents and the conclusions of the report. The Children's Court shall also consider the alternative predispositional report prepared by the child and his attorney, if any.

(6) The dispositional order constitutes a final order for purposes of appeal.

5.16 Dispositional Alternatives.

(1) If a child has been adjudged a juvenile offender, the Children's Court may make the following dispositions:

(a) Place the child on probation subject to conditions set by the Children's Court; or

(b) Place the child in an institution or agency designated by the Children's Court.

(2) The dispositional orders are to be in effect for the time limit set by the Children's Court, but no order shall continue after the child reaches the age of twenty-one (21) years of age.

(3) The dispositional orders are to be reviewed at the Children's Court discretion, but at least once every six (6) months.

5.17 Modification of Dispositional Order.

(1) A dispositional order of the Children's Court may be modified by the Children's Court upon a showing of change of circumstances.

(2) The Children's Court may modify a dispositional order at any time upon the motion of the following:

(a) The child; or

(b) The child's parent, guardian or custodian; or

(c) The Children's Court Counselor.

(3) If the modification involves a change of custody, the Children's Court shall conduct a hearing pursuant to Section 5.17

(4) to review its dispositional order.

(4) A hearing to review a dispositional order shall be conducted as follows:

(a) Notice in writing of the hearing shall be given to the child, the child's parent, guardian or custodian and their counsel at least forty-eight (48) hours before the hearing.

(i) The notice shall contain the name of the court; the title of the proceedings; a statement that the hearing is to review the disposition; and the date, time and place of the hearing.

(ii) The notice shall be delivered by a Tribal Law Enforcement Officer or an appointee of the Children's Court.

(b) Right to Counsel.

(i) The Children's Court Judge shall inform the child and his parents, guardian or custodian of their right to retain counsel by telling them "According to the Indian Civil Rights Act, you have a right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees for such representation."

(ii) If the parties appear at the hearing without counsel, the Children's Court Judge shall continue the proceedings if they need additional time to seek counsel.

(iii) If the parties are unable to pay for counsel the Children's Court Judge shall inform them of any available services that provide representation.

(c) The child need not be a witness against, nor otherwise incriminate, himself.

(d) The child and the child's parent, guardian or custodian shall be entitled to introduce evidence, to be heard on their own behalf and to examine witnesses.

(e) The Children's Court shall review the performance of the child, the child's parent, guardian or custodian and other persons providing assistance to the child and the child's family.

(f) In determining modification, the procedures prescribed in Section 5.14 and Section 5.15 of this Code shall apply.

(g) If the request for review of disposition is based upon an alleged violation of a court order, the Children's Court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

5.18 Court Records.

(1) A record of all hearings under this Code shall be made and preserved.

(2) All Children's Court records shall be confidential and shall not be open to inspection to any but the following:

- (a) The child; or
- (b) The child's parent, guardian or custodian; or
- (c) The Children's Court Counselor; or
- (d) The presenting officer.

5.19 Law Enforcement Records.

(1) Law Enforcement records and files concerning a child shall be kept separate from the record and files of adults.

(2) All Law Enforcement records and files shall be confidential and shall not be open to inspection to any but the following:

- (a) The child; or
- (b) The child's parent, guardian or custodian; or
- (c) The Children's Court Counselor; or
- (d) The presenting officer.

5.20 Expungement.

When a child who has been the subject of any proceeding before the Children's Court attains his twenty-first (21st) birthday, the Chief Judge of the Tribal Court shall order the Clerk of the Court to destroy both the court records and the law enforcement records.

5.21 Appeal.

(1) For purposes of appeal, a record of the proceedings shall be made available to the child, his parents, guardian or custodian. Costs of obtaining this record shall be paid by the party seeking the appeal.

(2) Any party to a Children's Court hearing may appeal a final order or disposition of the case by filing a written notice of appeal with the Children's Court within thirty (30) days of the final order or disposition.

(3) No decree or disposition of a hearing shall be stayed by such appeal.

(4) All appeals shall be conducted in accordance with the Tribal Code.

5.22 Contempt of Court.

(1) Any willful disobedience or interference with any order of the Children's Court constitutes contempt of court.

(2) The Children's Court may punish an adult for contempt of court in accordance with the Tribal Law and Order Code.

5.23 Medical Examination.

The Children's Court may order a medical examination for a child who is alleged to be a juvenile offender.

5.24 Line-up (option).

The Children's Court may authorize a line-up that includes a child in custody as an alleged juvenile offender for identification purpose only if:

(1) The child and the child's parent, guardian or custodian give their written consent; and

(2) The child is represented by counsel at the time of the line-up.

5.25 Fingerprints (option).

If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reasonable grounds to believe that the fingerprints are those of a child in custody, he may fingerprint the child for the purpose of immediate comparison with the latent fingerprints. Copies of the fingerprints shall be immediately destroyed if the comparison is negative or if the child is not referred to the Children's Court.

Chapter 6. CHILD-IN-NEED-OF-CARE

6.1 Complaint.

A complaint may be filed by a person who has knowledge of the facts alleged. The complaint shall be signed by the complainant. The complaint shall contain:

(1) A citation to the specific statutory provisions of this Code which gives the Children's Court jurisdiction of the proceedings; and

(2) Name, age and address of the child who is the subject of the complaint if known; and

(3) A plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred.

6.2 Warrant.

The Children's Court may enter an order called a warrant, directing that a child be taken into custody if the Children's Court finds there is probable cause to believe the child is a child-in-need-of-care.

6.3 Custody.

A child may be taken into custody by a Law Enforcement officer if:

(1) The officer has reasonable grounds to believe that the child is a child-in-need-of-care and that the child is in immediate danger from his surroundings and that his removal is necessary; or

(2) A warrant pursuant to Section 6.2 of this Code has been issued for the child.

6.4 Law Enforcement Officer's Duties.

A Law Enforcement Officer who takes a child into custody pursuant to Section 6.3 of this Code shall proceed as follows:

(1) Release the child to the child's parents, guardian or custodian and issue verbal counsel or warning as may be appropriate, unless shelter care is necessary.

(2) If the child is not released, the arresting officer shall make immediate and recurring efforts to notify the child's parent, guardian or custodian to inform them that the child has been taken into custody and inform them of their right to be present with the child until an investigation to determine the need for shelter care is made by the Children's Court Counselor pursuant to Section 6.5 of this Code; and

(3) If the child is not released, the child shall be taken immediately to the Children's Court Counselor by the arresting officer.

6.5 Children's Court Counselor's Duties.

(1) The Children's Court Counselor shall not place a child in shelter care unless a complaint is filed in accordance with Section 6.1 of this Code or the Children's Court orders that a child be taken into custody pursuant to Section 6.2 of this Code.

(2) If the child's parent, guardian or custodian has not been contacted, the Children's Court Counselor shall make immediate and recurring efforts to inform them that the child has been taken into custody and release the child to the parent, guardian or custodian unless shelter care is immediately necessary.

(3) If a child is not released to his parent, guardian or custodian the Children's Court Counselor shall place the child in shelter care pending the preliminary inquiry.

(4) If a child is not released to his parent, guardian or custodian, the Children's Court Counselor shall immediately explore recommendations for temporary care and custody for presentation at the preliminary inquiry.

6.6 Shelter Care.

(1) A child alleged to be a child-in-need-of-care may be detained, pending a court hearing, in the following places:

(a) A foster care facility on the reservation approved by the Tribe; or

(b) A private family home on the reservation approved by the Tribe; or

(c) A shelter care facility on the reservation approved by the Tribe.

(ii) If the parties appear at the hearing without counsel, the Children's Court Judge shall continue the proceedings if they need additional time to seek counsel.

(iii) If the parties are unable to pay for counsel the Children's Court Judge shall inform them of any available services that provide representation.

(b) The child need not be a witness against, nor otherwise incriminate, himself.

(c) The Children's Court shall give the child, his Counsel or person he has selected to represent him, and the child's parent, guardian or custodian and his counsel or person he has selected to represent him, the opportunity to introduce evidence, to be heard on their own behalf and to examine witnesses.

(6) The Children's Court shall hear testimony concerning:

(a) The circumstances that gave rise to the complaint or the taking of the child into custody; and

(b) The need for shelter care.

(7) If the Children's Court finds that probable cause exists to believe the child is a child-in-need-of-care, the child shall be released to his parents and ordered to appear at the adjudicatory hearing, unless:

(a) There is reasonable cause to believe that the child will run away so that he will be unavailable for further proceedings; or

(b) There is reasonable cause to believe that the child is in immediate danger from his parents, guardian or custodian and that his removal from them is necessary; or

(c) There is reasonable cause to believe that the child will commit a serious act causing damage to person or property.

(8) The Children's Court may release a child pursuant to Section 6.7 (7) of this Code to a relative or other responsible adult Tribal member if the parent, guardian or custodian of the child consents to the release. If the child is ten (10) years of age or older, the child and his parent, guardian or custodian must both consent to the release.

(9) Upon a finding that probable cause exists to believe that the child is a child-in-need-of-care and that there is a need for shelter care, the child's shelter care shall be continued. The court shall consider the Children's Court Counselor's recommendation prepared pursuant to Section 6.5 (4).

(10) If probable cause to believe the child is a child-in-need-of-care and the need for continued shelter care is not found, the complaint shall be dismissed and the child shall be released.

6.8 Investigation by the Children's Court Counselor.

The Children's Court Counselor shall make an investigation within twenty-four (24) hours of the preliminary inquiry or the release of the child to his parent, guardian or custodian to determine whether the interests of the child and the public require that further action be taken. Upon the basis of his investigation, the Children's Court Counselor may:

- (1) Recommend that no further action be taken; or
- (2) Suggest to the child, his parent, guardian or custodian that they appear for an informal hearing pursuant to Section 6.9 of this Code; or
- (3) Recommend that the presenting officer file a petition pursuant to Section 6.10 of this Code, in the Children's Court to initiate further proceedings. The petition shall be filed within forty-eight (48) hours if the child is in shelter care. If the child has been previously released to his parent, guardian or custodian, relative or responsible adult, the petition shall be filed within ten (10) days.

6.9 Informal Hearing.

(1) The Children's Court Counselor may hold an informal conference with the child and the child's parent, guardian or custodian to discuss alternatives to the filing of a petition if:

- (a) The admitted facts bring the case within the jurisdiction of the Children's Court; and
- (b) An informal adjustment of the matter would be in the best interest of the child and the Tribe; and
- (c) The child and his parent, guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

(2) Notice.

(a) Notice of an informal hearing shall be given to the child and his parent, guardian or custodian and their counsel as soon as the time for the hearing has been established.

(b) The Notice Shall Contain:

- (i) The name of the court; and
- (ii) The title of the proceedings; and
- (iii) A brief statement of the alleged circumstances upon which the child-in-need-of-care allegation is based; and
- (iv) The date, time and place of the informal hearing.

(3) Rights of Parties.

(a) Right to Counsel.

(i) The Children's Court shall inform the child and his parents, guardian or custodian of their right to retain counsel by telling them "According to the Indian Civil Rights Act, you have a right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees for such representation."

(ii) If the child or his parent, guardian or custodian appears at the hearing without counsel, the Children's Court Judge shall continue the proceedings if they need additional time to seek counsel.

(iii) If the child or his parents, guardian or custodian are unable to pay for counsel, the Children's Court Judge shall inform them of any available services that provide representation.

(b) The child need not be a witness against, nor incriminate, himself.

(c) The child and the child's parent, guardian or custodian shall be entitled to introduce evidence, to be heard on their own behalf, and to examine witnesses.

(4) No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any proceedings against the child under this Code.

(5) This Section does not authorize the Children's Court Counselor to compel any person to appear at any conference, produce any papers or visit any place.

(6) At the informal hearing, the Children's Court Counselor may:

(a) Refer the child and the parent, guardian or custodian to a community agency for needed assistance, or

(b) Order terms of supervision, calculated to assist and benefit the child which regulate the child's activities and which are within the ability of the child to perform; or

(c) Recommend that the presenting officer file a petition pursuant to Section 6.10 of this Code.

(7) The Children's Court Counselor shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation.

(8) Any informal adjustment period shall not exceed six (6) months.

(9) The Children's Court Counselor shall review the child's progress every thirty (30) days. If at any time positive results are not being achieved, the Counselor shall recommend that the presenting officer file a petition pursuant to Section 6.10.

6.10 Petition.

Proceedings under the Children's Code shall be instituted by a petition filed by the presenting officer on behalf of the Tribe and in the interests of the child. The petition shall state:

(1) The name, birthdate, and residence of the child;

(2) The names and residences of the child's parents, guardian or custodian;

(3) A citation to the specific statutory provision of this Code which gives the Children's Court jurisdiction of the proceedings; and

(4) If the child is in shelter care, the place of shelter care and the time he was taken into custody.

(5) The petition shall be filed according to the Adult Tribal Court Proceedings.

6.11 Summons.

(1) At least five (5) days prior to the adjudicatory hearing, the Children's Court shall issue summons to:

(a) The child; and

(b) The child's parent, guardian or custodian; and

(c) Any person the Children's Court believes necessary for the proper adjudication of the hearing; and

(d) Any person the child believes necessary for the proper adjudication of the hearing.

(2) The summons shall contain the name of the court; the title of the proceedings; and the date, time and place of the hearing.

(3) A copy of the petition shall be attached to the summons.

(4) The summons shall be delivered personally by a Tribal Law Enforcement officer or appointee of the Children's Court. If the summons cannot be delivered personally, the Court may deliver the summons by registered mail. If the summons cannot be delivered personally or by registered mail, the summons may be by publication.

6.12 Adjudicatory Hearing.

The Children's Court shall conduct the adjudicatory hearing for the sole purpose of determining whether the child is a child-in-need-of-care. The hearing shall be private and closed.

(1) Right of Parties.

(a) Right to Counsel.

(i) The Children's Court Counselor shall inform the child and his parents, guardian or custodian of their right to retain counsel by telling them, "According to the Indian Civil Rights Act, you have a right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees for such representation."

(ii) If the parties appear at the hearing without counsel, the Children's Court Judge shall continue the proceedings if they need additional time to seek counsel.

(iii) If the parties are unable to pay for counsel, the Children's Court Judge shall inform them of any available services that provide representation.

(b) The child need not be a witness against, nor otherwise incriminate, himself.

(c) The child and child's parent, guardian or custodian shall be entitled to introduce evidence, to be heard on their own behalf, and to examine witnesses.

(2) The Children's court shall hear testimony concerning the circumstances which gave rise to the complaint.

(3) If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Children's Court shall find the child to be a child-in-need-of-care and proceed to the dispositional hearing.

(4) A finding that a child is a child-in-need-of-care constitutes a final order for purposes of appeal.

6.13 Predispositional Report.

(1) The Children's Court Counselor shall prepare a written report which described all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of and assistance to the child, calculated to resolve the problems presented in the petition.

(2) The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child under the proposed plan.

(3) Preference shall be given to the dispositional alternatives which are listed in Section 6.16 and select that

which is the least restrictive of the child's freedom and is consistent with the interest of the Tribe. The report shall contain specific reasons for not recommending placement of the child with his parents or guardian or custodian.

(4) The Children's Court Counselor shall present the predispositional report to the Children's Court, the person selected by the child to represent him and the presenting officer, at least one (1) day before the dispositional hearing.

6.14 Dispositional Hearings.

(1) A dispositional hearing shall take place not more than ten (10) days after the adjudicatory hearing.

(2) At the dispositional hearing, the Children's Court shall hear evidence on the question of proper disposition.

(3) Notice.

(a) Notice of the dispositional hearing shall be given to the child and his parent, guardian or custodian and their counsel at least forty-eight (48) hours before the hearing.

(b) The Notice Shall Contain:

(i) The name of the court; and

(ii) The title of the proceedings; and

(iii) A statement that the hearing is to determine the disposition of the case; and

(iv) The date, time and place of the dispositional hearing.

(c) The notice shall be delivered by a Tribal Law Enforcement officer or an appointee of the Children's Court. If the notice cannot be delivered personally, the notice shall be delivered by registered mail.

(4) Rights of Parties.

(a) Rights to Counsel.

(i) The Children's Court Judge shall inform the child and his parents, guardian or custodian of their right to retain counsel by telling them, "According to the Indian Civil Rights Act, you have the right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees for such representation."

(ii) If the parties appear at the hearing without counsel, the Children's Court Judge shall continue the proceedings if they need additional time to seek counsel.

(iii) If the parties are unable to pay for counsel, the Children's Court Judge shall inform them of any available services that provide representation.

(b) The child need not be a witness against, nor otherwise incriminate, himself.

(c) The child and the child's parents, guardian or custodian shall be entitled to introduce evidence, to be heard on their own behalf, and to examine witnesses.

(5) At the dispositional hearing, the Children's Court shall consider the predispositional report submitted by the Children's Court Counselor and afford the parties an opportunity

to controvert the factual contents and conclusions of the report. The Children's Court shall also consider the alternative predispositional report prepared by the child and his attorney, if any.

(6) The dispositional order constitutes a final order for purposes of appeal.

6.15 Dispositional Alternatives.

(1) If a child has been adjudged a child-in-need-of-care, the Children's Court may make any of the following dispositions which are listed by priority:

(a) Permit the child to remain with his parent, guardian or custodian subject to such limitations and conditions as the court may prescribe; or

(b) Place the child with a relative within the external boundaries of the reservation subject to such limitations and conditions as the court may prescribe; or

(c) Place the child in a foster home within the external boundaries of the reservation which has been approved by the Tribe subject to such limitations and conditions as the court may prescribe; or

(d) Place the child in shelter care facilities designated by the court; or

(e) Place the child in a foster home or a relative home outside the external boundaries of the reservation subject to such limitations and conditions as the court may prescribe; or

(f) Recommend that termination proceedings begin.

(2) Whenever a child is placed in a home or facility located outside the boundaries of the reservation, the court shall require the party receiving custody of the child to sign an agreement that the child will be returned to the court upon order of the court.

(3) The dispositional orders are to be in effect for the time limit set by the Children's Court, but no order shall continue after the child reach the age of twenty-one (21) years.

(4) The dispositional orders are to be reviewed at the Children's Court discretion, but at least once every six (6) months.

6.16 Modification of Dispositional Order.

(1) A dispositional order of the Children's Court may be modified upon a showing of change of circumstances.

(2) The Children's Court may modify a dispositional order at any time upon the motion of the following:

(a) The child; or

(b) The child's parent, guardian or custodian; or

(c) The Children's Court Counselor.

(3) If the modification involves a change of custody, the Children's Court shall conduct a hearing pursuant to Section 6.17

(4) to review its dispositional order.

(4) A hearing to review a dispositional order shall be conducted as follows:

(a) Notice in writing of the hearing shall be given to the minor, the minor's parent, guardian or custodian and their counsel at least forty-eight (48) hours before the hearing.

(i) The notice shall contain the name of the court; the title of the proceedings; a statement that the hearing is to review the disposition; and the date, time, and place of the hearing.

(ii) The notice shall be delivered by a Tribal Law Enforcement Officer or an appointee of the Children's Court.

(iii) If the parties are unable to pay for counsel, the Children's Court Judge shall inform them of any available services that provide representation.

(b) The minor need not be a witness against, nor otherwise incriminate, himself.

(c) The minor and the minor's parent, guardian or custodian shall be entitled to introduce evidence, to be heard on their own behalf, and to examine witnesses.

(d) The Children's Court shall review the performance of the minor, the minor's parents, guardian or custodian and the Children's Court Counselor and other persons providing assistance to the minor and the minor's family.

(e) In determining modification of disposition, the procedures prescribed in Sections 6.14 and 6.15 of this Code shall apply.

(f) If the request for review of disposition is based upon an alleged violation of a court order, the Children's Court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

Chapter 7. TERMINATION

7.1 Authorization.

Parental rights to a child may be terminated by the Rocky Boy's Children's Court according to the procedures in this Chapter.

7.2 Petition.

Proceedings to terminate parent rights shall be instituted by a petition filed by the presenting officer on behalf of the Tribe pursuant to Section 6.16 (6) or by the parents or guardian of the child. The petition shall state:

(1) The name, birthdate, and residence of the minor;

(2) The names and residences of the minor's parent, guardian or custodian;

(3) If the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody.

7.3 Hearing Date.

Upon receipt of the petition, the Children's Court shall set a date for the termination hearing which shall be not more than

ten (10) days after the Children's Court receives the petition from the presenting officer. The hearing may be continued:

(1) Upon motion of the child's parent, guardian or custodian; or

(2) Upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the Children's Court finds the presenting officer has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

7.4 Pre-Termination Report.

(1) Within two (2) days of receiving the petition, the Children's Court Judge shall order the preparation of a pre-termination report by the Children's Court Counselor.

(2) The Children's Court Counselor shall consult with the child's parents and all social services, health, education and other personnel who have had prior professional contacts with the child and his parents, guardian or custodian to determine whether termination of parental right is consistent with the best interests of the child. The counselor may also review any of the child's previous Children's Court records.

(3) The Children's Court Counselor shall prepare a written report containing the professional opinions of all personnel with whom he has consulted. The report shall be presented to the Children's Court at least two (2) days before the termination hearing.

7.5 Summons.

(1) At least five (5) days prior to the termination hearing, the Children's Court shall issue summons to:

(a) The child; and

(b) The child's parent, guardian or custodian; and

(c) Any person the Children's Court believes necessary for the proper adjudication of the hearing; and

(d) Any person the child's parent, guardian or custodian believes necessary for the proper adjudication of the hearing.

(2) The summons shall contain the name of the Court, the title of the proceedings, and the date, time and place of the hearing.

(3) A copy of the petition shall be attached to the summons.

(4) The summons shall be delivered personally by a Tribal Law Enforcement officer or appointee of the Children's Court. If the summons cannot be delivered personally, the court may deliver the summons by registered mail. If the summons cannot be delivered personally or by registered mail, the summons may be by publication.

(5) If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court.

7.6 Termination Hearing.

The Children's Court shall conduct the termination hearing for the sole purpose of determining whether parental rights shall be terminated. The hearing shall be private and closed.

(1) Rights of Parties.

(a) Right to Counsel.

(i) The Children's Court shall inform the minor and his parents, guardian or custodian of their right to retain counsel by telling them, "According to the Indian Civil Rights Act, you have a right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees for such representation."

(ii) If the parties appear at the hearing without counsel, the Children's Court Judge shall continue the proceeding if they need additional time to seek counsel.

(iii) If the parties are unable to pay for counsel, the Children's Court Judge shall inform them of any available services that provide representation.

(b) The minor's parents need not be a witness against, nor otherwise incriminate, themselves.

(c) The Children's Court shall give the minor, his counsel, or person he has selected to represent him, and the minor's parent, guardian or custodian and his counsel or person he has selected to represent him, the opportunity to introduce evidence, to be heard on their own behalf and to examine witnesses.

(2) The Children's Court Shall Hear Testimony Concerning:

(a) The circumstances that gave rise to the petition; and

(b) The need for termination of parental rights.

(3) The Children's Court may terminate the parental rights of the parent to his child if it finds evidence beyond a reasonable doubt that:

(a) The parent has abandoned his child;

(b) The minor has suffered physical injuries willfully and repeatedly inflicted by his parent upon him which causes or creates a substantial risk of death, disfigurement, or impairment of bodily functions.

(c) The parent has subjected the minor to willful and repeated acts of sexual abuse; or

(d) The voluntary written consent of both parents has been acknowledged before the court.

7.7 Dispositional Alternatives.

(1) If parental rights to a child are terminated, the Children's Court shall:

(a) Place the minor in a foster care or shelter care facility which has been approved by the Tribe; and

(b) Proceed to the Adoption Section of the Tribal Code.

(2) If parental rights to a child are not terminated, the Children's Court shall make a disposition according to Section 6.16 of this Code.

7.8 Termination as Final Order.

The termination order constitutes a final order for purposes of appeal.

7.9 Effect on Minor's Enrollment Status.

No adjudication of termination of parental rights shall affect the child's enrollment status as a member of any Tribe or the child's degree of blood quantum of any Tribe.

TITLE VII.

CREDITOR-DEBTOR RELATIONS

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TITLE VII.

CREDITOR - DEBTOR RELATIONS

Chapter 1. CREDITOR-DEBTOR RELATIONS

1.1 Tribal Court Jurisdiction in Personal Property Transactions.

(1) Any transaction in which non-trust personal property is used as security shall be subject to the jurisdiction of the Tribal Court when at least one party to the disputed transaction is a member of the Chippewa-Cree Tribe, or the Tribe itself is a party.

(2) The Tribal Court shall have the authority to provide legal and equitable remedies in claims arising from disputed transactions over which it has jurisdiction.

(3) The Tribal Court shall have the authority to recognize or reject a state court adjudication of a transaction over which the Tribal Court has jurisdiction. Recognition of the state court decision shall have the same effect as would a Tribal Court adjudication of the claim.

1.2 Creditor Rights and Responsibilities.

(1) A creditor shall not repossess personal property held by a debtor on the Reservation unless the Tribal Court has adjudicated the claim and determined that repossession is the appropriate remedy, except as provided in Section 1.2, Subsection (2).

(2) A debtor may voluntarily surrender, by written consent, the secured personal property to the creditor. The written consent shall be obtained at the time of surrender. All contractual provisions concerning surrender which were executed in advance shall be of no effect.

(3) In the event that any provisions in this Section are violated, the Court may issue an order for the return of the property, or issue any other order which, in the Court's discretion, is appropriate.

1.3 Action to Foreclose Interest in Personal Property.

(1) An action to foreclose a security interest in non-trust personal property shall be commenced by filing a complaint in Tribal Court.

(2) If the debtor does not answer the complaint within the time prescribed by the Rules of Civil Procedure of this Code, the creditor may ask the Court to order the debtor-defendant in default.

(a) If it appears to the satisfaction of the Court that the debtor has failed to appear without excuse, the Court shall order the debtor in default and give judgment to the creditor, either in money damages or by ordering return of the property.

(3) After filing the Complaint, if the creditor reasonably shows the Court that the property is in imminent danger of being concealed, destroyed or removed from the Reservation, the Court